

Methodist Union in the Courts

The historical record of the legal aspects
of one of the world's great church unions

WALTER McELREATH

METHODIST UNION IN THE COURTS

WALTER McELREATH

In this volume the author has traced the story of the litigation which accompanied the creation of America's largest Protestant denomination.

From the long and involved court records he has isolated the significant points of issue and the more important testimony. To these he has added historical and legal data necessary for clear understanding. The resulting volume is one that will be considered as standard reference in the field of church union for many years to come.

In it the vital points are clearly dealt with and given perspective. The part which certain leaders played in the litigation is brought out, and the determining legal aspects are emphasized. These elements are then combined to form a concise summary of the entire story.

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METHODIST UNION IN THE COURTS

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by

WALTER McELREATH

MEMBER ATLANTA BAR ASSOCIATION

Introduction by
BISHOP CLARE PURCELL



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TO MY ASSOCIATES
IN
THE LITIGATION
OVER
METHODIST UNION

JUDGE ORVILLE A. PARK
JUDGE J. MORGAN STEVENS
THE HONORABLE HENRY R. SIMS
COLONEL R. T. JAYNES
THE HONORABLE R. E. BABB

INTRODUCTION

BY BISHOP CLARE PURCELL

THE REUNION OF THE METHODIST EPISCOPAL CHURCH, THE METHODIST Episcopal Church, South, and the Methodist Protestant Church in 1939 was an event of major significance in the church life of America and of the world. This consummation was the result of years of planning by many competent commissions representing the three churches. It was too much to expect that it would not be followed by opposition and litigation. The legality of the union was thoroughly tested in the courts. It is well that this has been done. Never again can the question be raised to cast doubt upon the legality of what was done in 1939. Church, state, and federal courts have declared the union legal.

While this litigation was not always accompanied by graciousness and Christian courtesy, it was conducted upon a very high level and with mutual respect. The attorneys on both sides were able and learned. The judges who heard the cases were uniformly considerate, and presided with dignity and impartial fairness.

The complete record of the testimony, briefs, arguments, and opinions would require many volumes. This book is intended to make available to the public the main points at issue as they were argued in the courts. Judge Walter McElreath, of Atlanta, has prepared this record, and in so doing he has rendered a valuable and distinct service to the church and the state. This volume will, for many years to come, be considered a standard reference in the field of church union.

I wish to acknowledge here my grateful appreciation for the capable and tireless service of the attorneys for the church in these cases. They were, in addition to Judge McElreath, Judge Orville A. Park, Macon, Georgia; Judge Morgan Stevens, Jackson, Mississippi; the Hon. Henry R. Sims, Orangeburg, South Carolina; Colonel R. T. Jaynes, Walhalla, South Carolina; and the Hon. R. E. Babb, Laurens, South Carolina.

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I

PROLEGOMENA

WHEN JUDGE JOHN JOHNSON PARKER, IN HIS NOTABLE OPINION in the case of *Purcell v. Summers*, aptly alluded to the striving of all Christians for unity in recent years, he probably had in mind the example set by the Presbyterians in the reunion of the Cumberland Presbyterian Church with the Presbyterian Church in the U. S. A., the creation of the United Church of Canada, the union of the different branches of Methodism in England in 1925, and of Presbyterianism in Scotland in 1929; but while the accomplishment of unity has been greater in recent years, the yearning for it has existed in every period of the history of the Christian Church. Indeed, unity is of the essence of Christianity. While the Council of Nicaea failed to terminate completely the divisive disputations of the ecclesiastics, the adoption of a creed which the vast majority of Christians have accepted as the common basis of their faith, was a unifying principle. In 1438, a synod of the Latin and Greek churches held a "Uniting Conference" at Ferrara and Florence, at which was signed and proclaimed an "Act of Union" on common articles of religion. Some of the disputations over the use of unleavened bread in the sacrament, and the use of the *filioque* in the creed, are strongly reminiscent of the insubstantial contentions over the Twenty-third Article of Religion made by the opponents of Methodist union. The union of the Latin and Greek churches, though short-lived, is important as evidence of the historic yearning for unity among Christians of all ages. The union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church signified this persistent urge and was the greatest ecclesiastical compact ever formed in America. By this union nearly eight million persons were united under a common creed and common articles of religion into one church, controlling nearly one billion dollars worth of property devoted to its uses, with a house of worship in practically every community, with educational

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and eleemosynary institutions located in every part of the United States, and missionary enterprises on every continent and in most of the countries of the world. The judicial decisions confirming the validity of this union and settling its property rights are certain to be cited in the courts for generations, and the process by which this union was accomplished will be studied by other religious societies considering unity.

On account of the historical importance of Methodist union and of the judicial proceedings confirming it, it has been thought that it would be useful to make these proceedings more easily available in book form than they would be in the comparative inaccessibility of the court files.

The case of *Turbeville v. Morris*, known as the "Pine Grove case," filed and tried in the Court of Common Pleas of South Carolina, grew out of a schism in a local church, and involved the respective rights of two factions in the church, one adhering to the united church, the other dissenting from it, and both claiming the right to the use and control of the local church property. The case of *Purcell v. Summers*, known as the Federal case, was a class suit in which the plaintiffs, by representation, were the entire membership of The Methodist Church seeking a declaratory judgment affirming the validity of union. In both cases, there was involved the right of The Methodist Church to prevent a rival religious society from being organized in the same territory in which the Methodist Episcopal Church, South, had operated, and from adopting and using the name "Methodist Episcopal Church, South," under the claim that it, in fact, was a continuation of that church.

In preparing this work, the writer was under great difficulty in deciding in what form to present the testimony of the witnesses. To have merely stated the substance of the testimony would not have precluded a natural doubt in the mind of the reader that the testimony was not fairly stated. To have reproduced the evidence in question and answer form, as it was delivered on the stand, would have required a volume of unreasonable bulk. He decided, therefore, to reduce the testimony to narrative form in the manner of a "brief of evidence." In thus briefing the testimony, the exact words of the witnesses have been re-

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produced, so far as possible, and extreme care has been taken to state the testimony so as to convey clearly the exact meaning of the witnesses as intended by them, and as understood by the courts. In places where the testimony could not be briefed so as to convey the exact meaning of the witness, it has been reproduced in question and answer form as delivered on the stand.

Fidelity to the record being the mandatory rule in preparing a brief of evidence, no effort has been made to polish up the literary style of the testimony in the construction of sentences or in the order of statement. The reader will understand that a witness on the stand cannot choose the order or sequence of his statements, but is compelled to answer the questions as put to him by counsel, and that the style of the testimony is necessarily marred in the process of briefing. This statement, unnecessary to lawyers familiar with briefs of evidence, is made in justice to the scholarly men who appeared as witnesses.

By merely stating the substance of the evidence and commenting on it, a less voluminous and more readable book could have been produced, but it would have been only of secondary value historically, and the primary record would not have been available except to those who might, at great trouble and expense, consult the court records.

The differences of opinion which had long existed among the leaders of the church concerning certain questions of constitutional substantive and procedural law came into final collision in the argument before the Judicial Council, and in the testimony in the Pine Grove case. Bishop Collins Denny's industrious research and ripe scholarship undoubtedly made him the ablest witness who could have been produced by his side of the controversy to expound the views held by him and those who agreed with him. It is equally doubtful if any abler experts could have been found in the whole church to present the contrary view than Bishops John M. Moore and Clare Purcell and Dr. (now Bishop) Paul N. Garber.

The Pine Grove case was heard in Charleston, South Carolina, before the Hon. Nathaniel B. Barnwell, as special referee, to whom the case was referred to take testimony and report his findings of fact and law. Mr. Barnwell was an eminent member of the Charleston bar, learned in civil and ecclesiastical law, an Episcopalian, and chan-

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cellor of the Diocese of South Carolina. After a long and patient hearing, he filed a lengthy and exhaustive report, affirming the validity of union, but denying the right to enjoin the defendants from the use of the name "Methodist Episcopal Church, South," upon the ground that by adopting the name "The Methodist Church," the uniting churches had abandoned the names by which they had formerly been known, and that they could not enjoin the use of a name which they were no longer using. His report was confirmed by Judge William H. Grimball, of the Court of Common Pleas of Clarendon County, South Carolina. To the order of confirmation both sides took exceptions and the case was carried on appeal to the Supreme Court of South Carolina, which rendered an opinion affirming the judgment of the Court of Common Pleas confirming the referee's report.

The Federal case was filed in the United States District Court for the Eastern District of South Carolina, Columbia Division, and was heard before the Hon. Alva Lumpkin. He dismissed the complaint upon the ground that the pendency of the Pine Grove case and several others in the state courts, of which the Pine Grove case was typical, deprived the federal courts of jurisdiction. This judgment was appealed from by the complainants and was carried to the United States Circuit Court of Appeals for the Fourth Circuit, and was reversed and remanded for further proceedings. Upon the filing of this decision, the defendants filed their petition for *certiorari* to the Supreme Court of the United States, which was denied. On the final trial before the Hon. George Bell Timmerman, who had succeeded Judge Lumpkin upon his death, the court followed the decision of the Supreme Court of South Carolina in upholding the validity of union, and in denying the right to enjoin the use of the name. No appeal was taken to that part of the judgment which affirmed the validity of union, but the plaintiffs appealed from that part of the judgment which denied the right to injunction. The Circuit Court of Appeals, in a notable opinion, reversed the lower court, and remanded the case with instructions to grant the injunction prayed for, thus completely vindicating the plaintiffs in all their contentions. In the writer's opinion, the opinion of Judge Parker in this case will take its place with *Harmon v. Dreher*, *Smith v. Swormstedt*, *Watson v. Jones*, and *Barkley v. Hayes*.

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In publishing this book, the writer makes no pretense to be an expert in ecclesiastical law. When he was first employed in this litigation he had only the meager knowledge of Methodist history, doctrine, and polity of the average member of a Methodist church, which is little indeed. He first became interested in the subject when he was appointed on the Committee on Permanent Funds during the preparation of the agenda for the proposed union. Before the General Conference of the Methodist Episcopal Church, South, at Birmingham, in 1938, Bishop John M. Moore requested the writer to prepare himself to represent the church in any litigation which might arise over unification, on account of current rumors that litigation might ensue. He acceded to this request and attended the conference in Birmingham and served on the committee which prepared the resolution passed by the conference adopting the Plan of Union.

When the Pine Grove case was filed, Bishop Clare Purcell, who was bishop of the South Carolina Area, along with the South Carolina attorneys who had been employed, came to Atlanta for consultation, with the result that the writer became engaged with them in the litigation, and his office became the headquarters and the clearing-house in communications between counsel in the preparation of the pleadings and briefs. It was never the writer's good fortune to be associated in litigation with counsel more capable and industrious, who co-operated more harmoniously, or did better teamwork. Each of the counsel participated in the final draft of every brief filed.

The original counsel in the Pine Grove case were Colonel R. T. Jaynes, of Walhalla, South Carolina, a lawyer of long experience and great learning; the Hon. Henry R. Sims, of Orangeburg, South Carolina, an able and scholarly lawyer, who for several years had been a member of the South Carolina Senate; the Hon. R. E. Babb, of Laurens, an experienced lawyer of keen legal judgment. After I had become associated in the Pine Grove case, Judge J. Morgan Stevens, of Jackson, Mississippi, and Judge Orville A. Park, of Macon, Georgia, became associated as counsel in the case. Judge Stevens is a lawyer of profound ability and did valuable work in the preparation of the briefs and in argument. But it is no derogation from the learning and ability of other counsel to give the primacy in knowledge of church

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history and in ecclesiastical law to Judge Park. He had had a long and brilliant career at the Georgia bar, was a lecturer in law at Mercer University, the compiler of Park's *Code of Georgia*, and a member of the Judicial Council of the Methodist Episcopal Church, South. On account of his superior knowledge of Methodist history and church polity, he was assigned the task of conducting the examination of the witnesses in the Pine Grove case, but in the midst of the examination he had a physical collapse from which he never recovered, and he died a few months later without living to enjoy the satisfaction of knowing the successful termination of the litigation to which he contributed so effectually.

The record in the Pine Grove case was unnecessarily voluminous, but that was a matter which plaintiffs' counsel could not control. Perhaps three fourths of the bulk of the testimony consists of the direct testimony of the defendants' witnesses and their cross-examination of the plaintiffs' witnesses. Much of it was of slight relevance to the specific issues involved, but it was not in the power of plaintiffs' counsel to confine the testimony into narrower bounds. In a trial before a master or special referee, he is limited in the exclusion of testimony and must note the objections and admit the testimony and leave its admission or rejection to the court on confirmation of his report, and to have continually objected would have only enlarged the record. But while the wide range of the testimony clouded the issue, it perhaps served a good purpose in making the record a valuable commentary on certain disputed points in the history, creed, and constitutional law of Methodism. Perhaps no four men in contemporary Methodism were more learned in the history of Methodism in America, and the creed and polity of the church than Bishop Collins Denny, Bishop John M. Moore, Bishop Clare Purcell and Dr. (now Bishop) Paul Neff Garber, and their testimony makes an interesting textbook on the points which were involved in the dispute over union.

The argument, as set out in the succeeding chapter, is only a brief outline of the voluminous briefs filed. These briefs, edited and combined, would make an encyclopedic textbook on ecclesiastical law. The briefs filed by the Hon. Collins Denny, Jr. and the Hon. C. T. Graydon, defendants' counsel, showed remarkable research into the

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history of American Methodism, and especially into the history of the Methodist Episcopal Church, South. It is perhaps permissible to say that the briefs of plaintiffs' counsel showed equal industry.

Before closing this prefatory chapter, the writer wishes to acknowledge his obligation to Bishop Clare Purcell for reading the manuscript and assisting in its correction and revision, and also his obligation to each of plaintiffs' counsel for his indefatigable labors in assisting the writer in this litigation and for his uniform courtesy. The writer also wishes to acknowledge his obligation to Miss Julia Bankston for typing the manuscript.

In offering this work to the public, the compiler does so, not with the hope of personal profit, but for whatever value it may be to those who, in other fields, may be striving for church unity.

II

HISTORICAL SKETCH

FOR A CLEARER UNDERSTANDING OF THE ISSUES INVOLVED IN THIS IMPORTANT litigation, it is necessary to present a short sketch of the history of the Methodist movement from which these uniting churches sprang, and particularly of the fundamental doctrines, constitutional principles, and legislation upon the construction of which those who denied the validity of union based their contentions of its invalidity.

All branches of The Methodist Church had a common origin in England in 1739 when John Wesley, then an ordained minister of the Church of England, drew up a plan or "compact" for the organization of autonomous religious societies for the cultivation of a deeper religious life, the inculcation of certain rules of Christian conduct, and the propagation of certain distinctive doctrines of religious belief. Although this plan of organization was never carried out, Mr. Wesley, with apostolic and consuming zeal and indefatigable industry, proceeded with the organization of such societies until they were organized throughout the British Isles for the promulgation of the religious ideas of their founder. By 1774 the movement had attained such importance that Mr. Wesley established the custom of having a yearly conference of all of the preachers in these societies, thus originating the idea of "Annual Conferences," which are now a part of the constitutional system of The Methodist Church.

One of the fundamental principles in the government of these societies was that the preachers should be appointed to their charges by Mr. Wesley, and that they should travel over their districts and carry the gospel to the people, thus originating the itinerant system which through its history has characterized the Methodist system. Another feature of his plan was that the titles of all the chapels in which the societies carried on their activities should be vested in him as trustee for the use of the societies, and for the use of the preachers appointed by him. Space forbids a discussion of the changes

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made by Mr. Wesley during his life time in the form of the deeds to local church property, or the changes which have been made by the church since his death. Suffice it here to state that this system of trusteeship was the original custom which has survived throughout the history of The Methodist Church, that the local houses of worship are held by trustees for the use of the ministry and membership of the church, subject to the discipline, usages, and ministerial appointments of the church. Thus from the constitution or plan of Mr. Wesley for the government of these early societies, the following distinctive features of Methodist polity were derived: preachers must itinerate and go from place to place according to their appointments and local houses of worship are held under deeds which require the local charges to receive the ministers appointed to them.

The distinctive religious doctrines of the societies were those contained in Wesley's *Explanatory Notes upon the New Testament* and his five series of sermons, including twenty-four of what are now called the twenty-five Articles of Religion. Articles I to XXII inclusive, and XXIV and XXV, as printed in the *Discipline* of the Methodist Church, are in the form prepared by Mr. Wesley. Article XXIII—"Of the Rulers of the United States of America"—declaring our recognized civil authorities to be rulers of this country, and declaring that these states ought not to be subject to any foreign jurisdiction, was adopted by the American church after the American Revolution and the adoption of the Constitution of the United States.

In the societies organized by Mr. Wesley, he was the supreme legislative and executive authority. "Mr. Wesley was the government; and, though he invited the preachers to confer with him, he did not propose to abandon any of his original power. They had a voice by his permission, but he reserved the right to direct."¹ It will thus be seen that The Methodist Church was not a democracy in its origin, nor has it ever been a democracy.

The constitution of the church differs from the Constitution of the United States. In the government of the United States all power and authority proceeds from the people, whereas, in The Methodist Church,

¹ Tigert, *A Constitutional History of American Episcopal Methodism* (quoting Neely's *Governing Conference in Methodism*), p. 21.

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authority has proceeded downward from a self-created supreme authority to the members.

As early as 1766, Methodist societies began to be formed in America, and rapidly grew in number and membership. In 1784, in order to provide a governing head for the American societies, Mr. Wesley ordained Thomas Coke as superintendent, and sent him as his chosen and accredited deputy to the American societies. Later Francis Asbury and Richard Wright were sent as apostles to the New World. As the result of the efforts of Coke, Asbury, Wright, and their associates, the work prospered and in a few years there were Methodist societies in all the American colonies. These societies served as the only churches of the people in many parts of America as then populated, but they were not churches in the true ecclesiastical sense, not being considered authorized to administer the most sacred religious rites. Many of the members of these societies considered themselves Episcopalians, and depended upon that church for the administration of baptism and the Lord's Supper.

As the number and membership of the societies in America grew, there was an ever-increasing sentiment in the societies that they should assume all the ecclesiastical functions of a true church. This sentiment took practical form at a conference which met at Lovely Lane Chapel, Baltimore, Maryland, on December 24, 1784, attended by sixty preachers of the American societies. This conference organized the "Methodist Episcopal Church in America," and adopted the "General Minutes," including twenty-four of the Articles of Religion substantially as they appeared in the *Disciplines* of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church at the time of union, and as they now appear in the *Discipline* of the Methodist Church. As originally organized, the unlimited exercise of the legislative, executive, and judicial powers of the church were vested in the traveling preachers meeting as a General Conference and, the conference being vested with the supreme legislative power, the Articles of Religion were subject to change at the will of the conference.

In 1808 the General Conference became a delegated conference with a representation of one to every five traveling preachers and, in order to allow all of the traveling preachers to vote on certain important

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matters of legislation, six Restrictive Rules were adopted, only the first of which is pertinent to the presentation of the issues involved in the litigation over the union of the three branches of Methodism. This article was as follows:

The general conference shall not revoke, alter, or change our articles of religion, nor establish any new standards or rules of doctrine contrary to our present existing and established standards of doctrine.

At the end of the six Restrictive Rules adopted was the following proviso:

Provided nevertheless, that upon the joint commendation of all the annual conferences, then a majority of two-thirds of the general conference succeeding, shall suffice to alter any of the above restrictions.

With the adoption of this proviso, the Annual Conferences became part of the constitutional legislative system of the church, and the legislative powers of the General Conference were accordingly limited.

Soon dissension arose in the church over the denial of lay representation in the General Conference, resulting in 1828 in the expulsion from the church of a large number of dissidents who met in Baltimore, November 12, 1828, and formed a provisional organization under the name of "The Associated Methodist Churches," which was changed at a General Conference held in Baltimore November 2, 1830, to "Methodist Protestant Church." This new church did away with the episcopacy and admitted lay representation in the conferences of the church. But it preserved substantially the same Articles of Religion as the Methodist Episcopal Church, and continued to exist as a separate and independent church with a connectional form of government until its reunion with the other branches of Methodism in 1939.

The General Conference of 1808, when it transformed itself into a delegated conference, fixed the basis of representation at one to seven. The growth of the church was so rapid in the next few years that the basis fixed in the Restrictive Rules adopted in 1808 made the conference too unwieldy. In 1824 a recommendation was sent down to the Annual Conferences to amend the Restrictive Rules by changing the ratio of representation to reduce the size of the membership

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in the General Conference. This recommendation was approved by all the Annual Conferences except one. The concurrence of all being necessary under the proviso of 1808, the amendment was defeated. The church then realized that it was under what Nathan Bangs called a "yoke," under which a majority of one negative vote in one Annual Conference could defeat any change in any of the Restrictive Rules. In order to relieve the church from this yoke, the General Conference in 1828 sent down to the Annual Conferences the recommendation that the rules of the *Discipline* be amended to make the proviso at the end of the Restrictive Rules read as follows:

Provided nevertheless, that upon the concurrent recommendation of three-fourths of all the members of the several annual conferences, who shall be present and vote on such recommendation, then a majority of two-thirds of the general conference succeeding shall suffice to alter any of the above restrictions excepting the first article: and also, whenever such alteration or alterations shall have been first recommended by two-thirds of the general conference, so soon as three-fourths of the members of all the annual conferences shall have concurred as aforesaid, such alteration or alterations shall take effect.

This proviso was duly recommended by all of the Annual Conferences and was approved by a two-thirds vote of the General Conference of 1832. By its adoption, the Annual Conferences ceased to be constitutional legislative units of the church, and the legislative powers vested in them by the proviso of 1808, were vested in the members of the Annual Conferences.

From the time of its organization the Methodist Episcopal Church was opposed to slavery and rarely, if ever, did a General Conference meet without, in some form, declaring against it. In 1844 this opposition came to a head. The churches in the slave-holding states withdrew from the Methodist Episcopal Church and formed a separate ecclesiastical organization under the name of the "Methodist Episcopal Church, South." This resulted in a division of the property heretofore belonging to the Methodist Episcopal Church, between the two branches of the church. However, this division of property was not accomplished without litigation over a division of the property of the Methodist Book Concern, which was settled under the terms of the decision of the Supreme Court of the United States in the case of *Smith v.*

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Swormstedt.² This separation was in no sense a secession of the Southern churches from the parent church, nor an expulsion of them, but was a bisection of the church along territorial lines, as was held in the opinion of Justice Nelson in *Smith v. Swormstedt*, in which he held:

The General Conference in 1844 had the power to consent to a division of the Methodist Episcopal Church into two bodies, and the separation was not a secession of a part of the traveling preachers from the church, but a division in pursuance of proper authority.

After the separation, each of the branches of the church had the same form of constitution and government and the same Articles of Religion.

After the War Between the States had closed, and the rancors caused by it had to a large degree faded, there existed in all three of the Methodist churches for many years prior to their reunion, a strong sentiment for reunion. Many plans were proposed but failed of adoption. Finally by concerted action on the part of the General Conferences of the three churches, a Joint Commission on Unification was appointed, charged with the duty of working out and submitting to their General Conferences a plan of union, whereby the three churches might be united into one great church. The commission referred to, composed of representatives of the three churches, proceeded to formulate a plan of union. It completed its work on August 16, 1935, after which the Plan of Union so formulated was reported to the respective General Conferences for their approval and adoption.

The Methodist Episcopal Church, in accordance with its *Discipline*, submitted the Plan of Union to its Annual and Lay Conferences, which approved the plan by a vote of 16,942 to 1,869, thereby approving the plan by the requisite constitutional majority. The plan was then submitted to the 1936 General Conference and was approved by a vote of 470 to 83.

The plan was submitted to the Annual Conferences of the Methodist Protestant Church in 1936 and was approved by a vote of 1,265 to 389, thereby approving the plan by the requisite constitutional majority, after which the plan was submitted to the church's General Conference and adopted by a vote of 142 to 39.

² 16 Howard, 288.

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It was submitted to the Annual Conferences of the Methodist Episcopal Church, South, in 1937-38, and was approved by a vote of 7,650 to 1,247, all of the Annual Conferences giving a majority for the plan except the North Mississippi Annual Conference, in which the vote in favor of the adoption of the plan was 117 to 125 against its adoption.

At the General Conference of the Methodist Episcopal Church, South, held in Birmingham, Alabama, in April and May, 1938, there was submitted to the conference a resolution ratifying and adopting the plan and authorizing the union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, the resolution following a preamble setting forth the jurisdictional facts precedent to its adoption. Upon the introduction of this resolution, John W. Kyle, a delegate from the North Mississippi Annual Conference, made the following point of order:

This General Conference is powerless to adopt the Plan of Union because the adoption of the Plan would necessarily amend the Articles of Religion and would necessarily alter the procedure for amending the Articles, neither of which may be done without the recommendation of each Annual Conference, and the North Mississippi Conference has withheld its recommendation.

The presiding bishop overruled the point of order upon the ground that a ruling upon it would involve the decision of a legal question which was not within the jurisdiction of a bishop, but was one to be decided by the Judicial Council. He submitted the motion to adopt the resolution to a vote of the General Conference, which after a long debate adopted the resolution by a vote of 434 to 26. More than two thirds of the General Conference having voted in favor of the resolution, it was declared adopted by the requisite constitutional majority. Appeal was then taken to the Judicial Council.

The Judicial Council, after a public hearing at which long arguments were made, reported its opinion and judgment to the conference, overruling all the contentions of those opposing union and upholding its validity.

After the decision of the Judicial Council, the conference then proceeded with plans for the Uniting Conference provided for in the Plan of Union.

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The Plan of Union provided that there should be a Uniting Conference, composed of 900 delegates—400 from the Methodist Episcopal Church, 400 from the Methodist Episcopal Church, South, and 100 from the Methodist Protestant Church—chosen in such manner as might be determined by the respective General Confereneces. It also provided that the ministerial and lay members should be equal in number.

The General Conference of the Methodist Episcopal Church, South, did not provide the manner in which delegates to the Uniting Conference should be elected, except to provide that they should be elected by the Annual Conferences. In electing these delegates they were elected by orders, the traditional manner by which delegates to the General Conference had been elected, that is, the clerical delegates were voted for by the clerical members, and the lay delegates were voted for by the lay members.

The Uniting Conference meeting in Kansas City, Missouri, on April 26, 1939, perfected the union of the churches and made a Declaration of Union, consisting of a preamble and certain declarations of principles. This declared that the three uniting churches were one united church; that the Plan of Union should be the constitution of the united church and of its constituent bodies; that the three churches had a common origin in the organization of the Methodist Episcopal Church in America in 1784, and that they had ever held, adhered to, and preserved a common belief, spirit, and purpose, as expressed in their common Articles of Religion. It further declared:

The Methodist Episcopal Church, The Methodist Episcopal Church, South, and The Methodist Protestant Church, in adopting the name "The Methodist Church" for the United Church, do not and will not surrender any right, interest or title in and to these respective names, which, by long and honored use and association, have become dear to the ministry and membership of the three uniting Churches and have become enshrined in their history and records.

The Methodist Church is the ecclesiastical and lawful successor of the three uniting Churches, and through which the three Churches as one United Church shall continue to live and have their existence, continue their institutions, and hold and enjoy their property, exercise and perform their several trusts under and in accord with the Plan of Union and *Discipline* of the United Church; and such trusts or corporate bodies as exist in the constituent Churches shall be continued as long as legally necessary.

III

THE JUDICIAL COUNCIL AND ITS DECISION

AT FIRST THE UNLIMITED LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS OF the church were vested in the General Conference. It is obvious, therefore, that there was no competent tribunal to adjudicate the constitutionality of its legislative acts. It is axiomatic that the General Conference could not pass upon the constitutionality of its own legislative acts. *Nemo sibi esse iudex vel suis ius decere debet.* (No one ought to be his own judge, or the tribunal in his own affairs.) In 1854, the General Conference attempted to remedy this defect in the constitution of the church by adopting a resolution which provided that the bishops be given the power to veto or arrest any action of the General Conference which they deemed to be unconstitutional. In 1870 the attention of the General Conference was called to the fact that the action of 1854 was itself unconstitutional for the reason that it invoked a change in the constitution of the church, which had not been sent down to the Annual Conferences for their approval. The conference then sent down to the Annual Conferences a proposal to amend the Restrictive Rules by adding a second proviso, as follows:

Provided, That when any rule or regulation is adopted by the General Conference, which, in the opinion of the Bishops, is unconstitutional, the Bishops may present to the Conference which passed said rule or regulation, their objections thereto, with their reasons; and if then the General Conference shall, by a two-thirds vote, adhere to its action on such rule or regulation, it shall then take the course prescribed for altering a restrictive rule, and if thus passed upon affirmatively, the Bishops shall announce that such rule or regulation takes effect from that time.

This method of adjudicating upon the constitutionality of legislation by the General Conference was defective in that the power to arrest legislation was lost if it was not exercised at the session of the conference at which it was passed. If legislation in fact unconstitutional

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was not challenged during the session of the conference which passed it, the power to adjudicate upon its constitutionality was lost.

At the General Conference of 1930 a proposal to take the judicial power from the bishops and vest it in a Judicial Council was adopted and sent down to the Annual Conferences for their approval. This was given, and in 1934 this amendment was adopted by the General Conference. The jurisdiction of the Judicial Council was thus defined:

The Judicial Council shall have appellate power to determine the constitutionality of any act of the General Conference or of any Annual Conference, whether or not any act of the General Conference violates the constitution of the Church; to hear and determine the appeal of a traveling preacher; to determine an appeal taken by one-third of the Conference, Board, or body from which the appeal comes, or by one-third of the College of Bishops, all appeals from a bishop's decision on the question of law in an Annual or District Conference; to hear and determine all other questions involved in appeals from any connectional board or body of the Church; to have such other jurisdiction as may be conferred upon it by the General Conference; *provided*, that it shall have no jurisdiction under an appeal by a Bishop involving his character or the efficiency of his administration. In such cases the Bishop shall be allowed an appeal directly to the General Conference. . . . The decision of the Council shall be final; *provided*, that when the Council shall have declared any act of the General Conference unconstitutional it shall take the course provided for constitutional alterations.

After the vote adopting the Plan of Union, the entire College of Bishops, in accordance with Paragraph 337 (1) of the *Discipline*, signed and transmitted to the Judicial Council, the following request:

More than one-third of the College of Bishops hereby in writing, attested by the President and Secretary of the College of Bishops, request the Judicial Council to determine the legality of the act of the General Conference of the Methodist Episcopal Church, South, on the 29th day of April, 1938, and of all actions of the members of the Annual Conferences of the Methodist Episcopal Church, South, in the ratification and adoption of the Plan of Union of the Methodist Episcopal Church, the Methodist Protestant Church, and the Methodist Episcopal Church, South, and the legality of the approval and authorization of the union of the Methodist Episcopal Church, South, with the Methodist Episcopal Church and the Methodist Protestant Church, and whether or not said union and Plan of Union have been legally adopted, and union legally authorized.

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Upon receipt of this request, the Judicial Council set a hearing for the afternoon of April 30, 1938. Interested persons desiring to attack the legality of the act of the General Conference were requested to file with the Judicial Council a statement of the grounds upon which they based their claim that this act was illegal. In compliance with this request, Bishop Collins Denny and the Hon. Collins Denny, Jr., filed the following:

Statement of points relied upon in support of the contention that the resolution adopted on April 29, 1938, by the General Conference of the Methodist Episcopal Church, South, in connection with the plan of Union is void as a violation of the Constitution of such Church, and that said Plan of Union has not been adopted by the Methodist Episcopal Church, South.

The General Conference of the Methodist Episcopal Church, South, having on April 29, 1938, adopted a resolution reciting in part as follows: "That we . . . do hereby ratify and adopt the plan of union, which has been submitted to the General Conference, and hereby approve and authorize the union of the Methodist Episcopal Church, South, with the Methodist Episcopal Church and the Methodist Protestant Church," and an appeal therefrom having been duly taken by the College of Bishops of said Church to the Judicial Council of said Church, and Collins Denny, a Bishop of said church, and Collins Denny, Jr., a layman of said church, appearing before the Judicial Council on the question of the power of said General Conference to adopt said resolution, file this statement of points in support of the contention that said action of the General Conference is void, and the union of the three churches in accordance with the provisions of the plan has not been approved and authorized by the Methodist Episcopal Church, South.

[1] Said plan of union cannot be adopted without revoking, altering, or changing the Articles of Religion of the Methodist Episcopal Church, South, and said Articles of Religion may not be revoked, altered, or changed without the joint recommendation of all the Annual Conferences and by a majority of two-thirds of the General Conference succeeding.

[2] The adoption of said plan of union would amend, alter, or change the procedure established for amending or altering the first restrictive rule, and that procedure cannot be amended or altered without the joint recommendation of all the Annual Conferences and a majority of two-thirds of the General Conference succeeding.

[3] The North Mississippi Annual Conference, by a vote of 125 to 117, declined to approve said plan of union, and thereby withheld its recommendation that the Articles of Religion be revoked, altered, or changed in accordance with the provision of said plan, and thereby withheld its recommendation that the procedure for altering or amending the first restrictive rule be itself changed in accordance with the provisions of said plan of union.

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The Judicial Council was composed of five clerical and four lay members. The president of the council was Martin E. Lawson; the secretary, the Rev. J. Stewart French; the others were the Rev. A. C. Millar, the Rev. Waights G. Henry, the Rev. J. W. Johnson, and the Rev. A. J. Weeks, clerical members, and Orville A. Park, M. A. Childers, and Robert L. Flowers, lay members. These were all men of outstanding ability. The clerical members were of unusually high scholarly attainments and were profound students of Methodist constitutional history. The lay members were all lawyers of high rank in their profession.

The hearing, held on the afternoon of April 30, 1938, was conducted with all the formality and dignity of a supreme court. Two hours were allotted to each side for argument. Those contending that the action of the General Conference in adopting the Plan of Union was invalid, were represented by Bishop Collins Denny and the Hon. Collins Denny, Jr. Those supporting union were represented by Bishop John M. Moore, Dr. T. D. Ellis, J. T. Ellison, Nathan Newby, Hugh A. Locke and Walter McElreath.

Bishop Denny, in opening the argument stated:

This is a plan by its own terms, that is to end the existence of each of the three churches involved and to organize an entirely new church. In other words, all the traditions connected with the name, connected with our tradition, our history, are to end, and we are to go out under a new name, and go out with broken traditions, broken sentiments; and, therefore, we say that no such issue has ever been before the church.

The bishop then went on to base his argument upon two points: "that by constitutional process the Articles of Religion have been changed, so far as applicable to the foreign conferences; that the procedure for changing the Articles of Religion are changed. . . ." He called attention to the fact that the method of changing the Articles of Religion contained in the Plan of Union was by "a two-thirds vote of the General Conference and a three-fourths vote of all the members of the several Annual Conferences present and voting, or the reverse." He then made the contention that the Articles of Religion could only be altered or changed under the proviso of 1808, which required a majority vote in all the Annual Conferences. In support of this con-

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tention, he cited and relied on the action of the General Conference of 1906 in adopting the report of a committee headed by Bishop John J. Tigert, which read as follows:

Your committee also unanimously recommends that the editor of the next edition of the Discipline be directed to insert in line 8, paragraph 43, page 23 of the Discipline, after the words "except the First Article," the following: "which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding"; so that the paragraph shall read:

"Paragraph 43. *Provided, nevertheless*, that upon the concurrent recommendation of three-fourths of all the members of the several Annual Conferences, who shall be present and vote on such recommendations, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions, excepting the first Article, *Which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding.*"

Bishop Denny and Mr. Collins Denny, Jr., cited little authority for the proposition that the inserted words were ever a part, or intended to be a part, of the proviso of 1832, and attempted to avoid the weakness of historical authority for the insertion of the so-called omitted words by the contention that the action of the General Conference of 1906, and the failure thereafter to rescind the action amounted to nine judicial judgments interpreting the action of 1906 as the true constitutional form of the proviso of 1832, and that this judicial construction was *res judicata*, and had fixed the constitutional law of the church.

Bishop John M. Moore followed Bishop Denny and opened the argument for those supporting the validity of union in a speech of remarkable clarity and cogency, exhibiting a thorough comprehension and knowledge of the subject. Citing Fisk, Buckley, Neely, Bangs, and Emory, he contended that there was no historical basis for the contention that the words inserted in the *Discipline* by the General Conference of 1906 had ever been or had ever been intended to be a part of the proviso of 1832. He asserted that there was "not a single, solitary authority in the Methodist Episcopal Church that ever said anything else than when they—the men of 1828—said 'excepting the First Article,' they meant to stop right there." Consequently, as the speaker contended, the insertion of the words added in 1906 were not a re-

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storation but were an act amending the constitution, and void because the constitutional method of amending the constitution of the church was not followed. It was not and could not be validated by the failure of the bishops to arrest the action or by the failure of the General Conference to rescind the action at future sessions. Moreover, as he contended, the judicial power of the bishops was limited to the arresting of legislation at the session at which it was passed, and there never had been a time since the close of the session of 1906 at which the bishops could have exercised any judicial power over the matter.

Bishop Moore was followed by J. T. Ellison, a prominent attorney of Centreville, Alabama, who called attention to the fact that the judicial power once vested in the General Conference had been taken away—especially the power to pass upon the constitutionality of its own acts—and to the limitations on the judicial power of the bishops. He reviewed the decision of the Supreme Court of the United States in the case of *Smith v. Swormstedt* in which the court had held that the General Conference, in the exercise of its legislative power, had the right to divide the church. He argued that under the exercise of the same legislative power the General Conference had the power to unite the church with another church of like doctrine, faith, and creed, even without reference to the Annual Conferences.

Mr. Ellison was followed by Judge Nathan Newby, of Los Angeles, California, who addressed himself principally to the proposition that the doctrine of *res judicata* did not apply to the action of the General Conference of 1906. He based his argument upon two propositions; first, that the General Conference, when it was acting at that time [1906], was not acting as a judicial body, but as a legislative body, and that, therefore, there was no place for the application of the doctrine of *res judicata*; and, second, that if in fact, it did violate the constitution of the church, and was not adopted in the manner required, that no length of time of acquiescence could make that legal which was illegal. These propositions were supported by abundant citations from authorities.

Judge Newby was followed by Judge Hugh A. Locke, of the Birmingham, Alabama, bar. His argument has not been preserved, and an abstract of it cannot be made. He ably supported the arguments of Mr.

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Ellison and Judge Newby, and then addressed himself largely to the proposition that the difference in the footnote to the Twenty-third Article of Religion in the *Discipline* of the Methodist Episcopal Church, and in that of the Methodist Episcopal Church, South, constituted no substantial difference in the Twenty-third Article of Religion, which, without the footnote, was the same in both books.

Judge Locke was followed by Dr. T. D. Ellis in an argument illustrating his well-known scholarship and ability. He called attention to the ruling of the civil courts that there must be a fundamental difference in doctrine to prevent the union of churches, and contended that a footnote embodying the same idea expressed in the body of a doctrinal statement did not constitute a fundamental difference of doctrine. On the point that the division of the church was within the legislative power of the General Conference without reference to the Annual Conferences, he cited the fact that in 1870, the General Conference set off the Negro members and gave them property worth \$1,500,000 and never referred it to the Annual Conferences; that a commission on church union for the church in Japan was set up, and united the Methodist Episcopal Church and the Methodist Episcopal Church, South, in Japan, and that the plan was never referred to the Annual Conferences; that there was a commission appointed to unite the Methodist Episcopal Church and the Methodist Episcopal Church, South, in Mexico, which worked out a plan and made a proclamation of union and reported it back to the General Conference, and it was adopted by the General Conference and never went down to one Annual Conference; that a commission was appointed to unite the Methodist Episcopal Church and the Methodist Episcopal Church, South, in Korea, and they united the two churches in that country without giving any conference a chance to vote upon it. He insisted that in adopting the Plan of Union, no doctrine of the church was changed, and that the church was not proposing to change the Twenty-third Article of Religion or any other doctrine held in common by the uniting churches.

Walter McElreath concluded the argument for those supporting the validity of union, by briefly calling attention to the well-known rule of statutory construction, that when an act contains a number of separate

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provisions, some of which are constitutional and some unconstitutional, the whole act will not be declared unconstitutional if the constitutional provisions standing alone are capable of enforcement. He called attention to the fact that the broad object of the Plan of Union was to unite the three churches into one organization, and if the method of amending the Articles of Religion was not constitutional (which he did not admit), the courts would not hold that the whole plan should fail on account of the inclusion in it of an unconstitutional method of making a future amendment, but would approve the act and allow the method to stand until it was proposed to make an amendment under it.

The Hon. Collins Denny Jr., concluded the argument for those contesting the validity of union in an ingenious and highly technical argument, adding little to the argument of his distinguished father, which he merely amplified.

After the conclusion of the argument, the council took the matter under advisement, and before the adjournment of the conference reported its finding and opinions as follows:

More than one-third of the College of Bishops having, in accordance with the provisions of our Discipline, requested the Judicial Council to determine the legality of certain matters set forth in such request, the matters therein contained are before us for determination, and the Judicial Council has jurisdiction and power to determine the same.

It appears from the statement of the grounds of the appeal, from the argument of counsel, and from the written briefs filed in support of the appeal, that the major contention in the attack upon the legality of the act of the General Conference adopting the Plan of Union is that said proposition was not legally before the General Conference for action, it not having received the joint recommendation of all the Annual Conferences, the North Mississippi Conference having given a majority against the Plan of Union.

Paragraph 43 of the Discipline, 1934 edition, reads in part as follows:

“Provided nevertheless, that upon the concurrent recommendation of these fourths of all the members of the several Annual Conferences, who shall be present and vote on such recommendation, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions (Restrictive Rules) excepting the first article, which may be altered upon the Joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding.”

The specific contentions made in this respect are:

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First: That in the Plan of Union the first Restrictive Rule is violated; in that No. XXIII of the Articles of Religion is changed; and,

Second: That said Plan of Union makes a change in the method of amending the First Restrictive Rule.

It is insisted that such changes cannot be made except upon the joint recommendation of all the Annual Conferences.

The First Restrictive Rule reads as follows:

"The General Conference shall not revoke, alter, or change our Articles of Religion, or establish any new standards of doctrine contrary to our existing and established standards of doctrine."

The Plan of Union contains the following provisions:

"Article III, Articles of Religion.

The Articles of Religion shall be those historically held in common by the three uniting Churches. (See Disciplines.)

Section III, Amendments.

1. Amendments to the Constitution may originate in either the General Conference or an Annual Conference.

2. Amendments to the Constitution shall be made upon a two-thirds majority of the General Conference present and voting and a two-thirds majority of all the members of the several Annual Conferences present and voting, except in the case of the First Restrictive Rule, which shall require a three-fourths majority of all the members of the Annual Conferences present and voting. . . ."

To arrive at a correct determination of the issues presented by these contentions it is necessary to examine into the Constitutional History of the Church.

Up to and including the General Conference of 1808, the General Conference was composed (with slight changes from time to time; see *A Manual of the Discipline*, 19th Edition, pp. 12-13) of all the preachers "who had traveled four years from the time of their reception on trial by an Annual Conference, and were in full connection at the time the General Conference was held."

It was a mass convention "of the entire ministry of the Church in full connection. There are no terms too broad or too high to express the unlimited powers which belonged to this body and which continued to belong to it (The General Conference) until 1808. . . ."

"The principle of the absolute supremacy of the quadrennial General Conferences from 1792 to 1808, in the government of the Methodist Episcopal Church, is undisputed and indisputable." [Tigert's *Constitutional History of American Episcopal Methodism*, 6th Ed., pp. 274-5.]

This unlimited power in these mass General Conferences was due to the fact that the traveling preachers in full connection constituted the governing body of the Church and these General Conferences were conventions of those in whom resided the original unlimited powers, legislative, judicial, and administrative.

The General Conference of 1808, composed of all traveling preachers

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who had been such for four years, and were in full connection at that time, decided that thereafter the General Conference should be made up of delegates elected by the Annual Conferences. It provided that the proposed delegated General Conference "shall have full powers to make rules and regulations for our Church, under the following limitations and restrictions." Then follow the six Restrictive Rules, at the close of which is the following: "Provided, nevertheless, that upon the joint recommendation of all the Annual Conferences, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions."

The General Conference of 1832 completed the change of this proviso begun by the General Conference of 1828, so as to make it read as follows: "Provided, nevertheless, that upon the concurrent recommendation of three-fourths of all the members of the several Annual Conferences, who shall be present and vote on such recommendation, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of such regulations, excepting the first article. And, also, whenever such alteration or alterations shall have first been recommended by two-thirds of the General Conference, so soon as three-fourths of the members of the Annual Conferences shall have concurred, as aforesaid, with such recommendation, such alteration or alterations shall take effect."

It is to the first part of this proviso, and more especially to the clause "excepting the first article" that we call special attention. This language, word for word, remained in the Discipline of the Methodist Episcopal Church until 1900, when it adopted its written constitution, at which time "two-thirds" was substituted for "three-fourths" where the latter word was to be found. In every other respect, especially as regards the phrase "excepting the first article," it remains there to this day. In the Methodist Episcopal Church, South, it remained exactly as it was adopted in 1832 for seventy-four years. However, at the General Conference of 1906 there was a report brought in by a special committee of which Dr. John J. Tigert was Chairman, as follows:

"Your committee also unanimously recommends that the editor of the next edition of the Discipline be directed to insert in line 8, paragraph 43, page 23, of the Discipline after the words 'excepting the First Article,' the following: 'which may be altered upon the joint recommendation of all the Annual Conferences and a majority of two-thirds of the General Conference succeeding,' so that the paragraph shall read as it is now in our Discipline, as follows:

'Provided, nevertheless, that upon the concurrent recommendation of three-fourths of all the members of the several Annual Conferences, who shall be present and vote on such recommendation, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions, excepting the first article, which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding, . . .'

The Committee then went on to say: "The General Conference of 1808 enacted this language prescribing the method for the constitutional amendment of all the Restrictive Rules. In 1828 the General Conference asked the

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Annual Conferences to alter this method for all the Restrictions except the First. It was done. The General Conference did not ask for any change in the method prescribed for constitutionally amending the First Restriction, nor did the Annual Conferences have any such proposition before them. Hence, the prescription of 1808 as applied to the First Restrictive Rule has always had and still has the force of law. Your committee, therefore, unanimously recommends its restoration to its proper place in the Discipline." The General Conference adopted the report, the editor of the next Discipline obeyed the expressed will of the Conference by inserting the suggested clause, and there it has remained to this day.

Was this insertion legal? Did the General Conference of 1906 have the right to insert this clause? We think not. For seventy-four years, it had not appeared in the Discipline of the Church. Now, if the General Conference of 1906 meant it as constitutional law, which seems certain from the place of its insertion, then it is very clear that it exceeded its authority. Constitutions cannot be thus dealt with and the General Conference has no right to pass upon the constitutionality of its own acts. (Par. 672, Discipline of 1934.) In the Methodist Episcopal Church, South, there is a specific way by which changes in the Constitution can be made, and that way includes submission to the members of the several Annual Conferences. But this clause was never submitted to them. If, on the other hand, that Conference meant it as no more than an interpretation of the action of the General Conference of 1828-32, then it bears whatever weight the Conference of 1906 can give it, but no more; and certainly that weight alone, without that of the members of the several Annual Conferences, is not sufficient to include it in the Constitution.

It has been contended that acquiescence for thirty-two years gives the clause a right to remain. In the first place, the seventy-four years that it was not there would seem to have more weight of authority than the thirty-two it has been there. In the second place there has not been universal acquiescence. It has been challenged in several instances. In the issue of the *Methodist Quarterly Review* pp. 234-250, for October of the same year, 1906, Mr. Wilbur Fisk Barclay, a lawyer of Louisville, Ky., author of *The Constitution of the Methodist Episcopal Churches in America*, and who served as Secretary of the Constitutional Commission of the Methodist Episcopal Church, South, had an article, "An Easy Way of Changing the Restrictive Rules," in which he protested against the legality of this action. Even as late as the General Conference of 1922, Dr. James A. Anderson (who had previously written an article for the *Review*—Vol. 79, pp. 174-179) and others, presented to a special committee on the Constitution, a resolution as follows:

"Whereas paragraph 43 of the Discipline, providing a method for altering the Restrictive Rules, contains the following words 'which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding'; and whereas these words appear in their present form for the first time in the Discipline of 1906, and are manifestly an unauthorized interpolation, apparently based upon mis-

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interpretation of the constitutional action taken in the year 1828; therefore be it

'Resolved, That the editor of the next edition of the Discipline be instructed to delete from paragraph 43 the aforesaid words.'

The fact that the Committee nonconcurred, and the Conference of 1922 adopted its recommendation, proves not the right of the phrase to a place in the Constitution but only that there was active opposition to its seemingly legal status, even if it was on the part of a small majority. We can reach no other conclusion but that the phrase, "which may be altered upon the joint recommendation of all the Annual Conferences and a majority of two-thirds of the General Conference succeeding," has no right in the Constitution of the Methodist Episcopal Church, South.

The further question remains of the correctness of the interpretation, by the General Conference of 1906, of the action of the General Conferences of 1828-32. Once again, we must call attention to those matters of history pertinent to the pending subject. When the General Conference of 1808 adopted the proviso, "that upon the joint recommendation of all the Annual Conferences, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions," it made the Annual Conference the unit in voting on all contemplated constitutional changes, and we have no doubt that this is exactly what they intended to do. They were jealous of the rights of the Annual Conferences, and they proposed to hold within them the power of initiating constitutional changes and very largely the disposition of the same.

But as the years passed and the numbers and size of the Annual Conferences increased, they found themselves in a dilemma which bade fair to destroy the effectiveness of the delegated body. It was brought home to them as follows: The second Restrictive Rule as adopted by the General Conference of 1808 read as follows: "They shall not allow of more than one representative for every five members of the Annual Conference nor allow a less number than one for every seven."

We now quote from Bangs' *History of the Methodist Episcopal Church*, Vol. IV, p. 103, as follows:

"A recommendation had been sent the rounds of the Annual Conferences requesting them to empower the General Conference of 1828 to diminish the number of delegates. This recommendation passed all the Annual Conferences except the Philadelphia; and as it required *all* the Conferences to concur before the alteration could be made by the General Conference, the measure was defeated by a nonconcurrence of this single Annual Conference. It was thus that we all began to feel the pressure of the yoke which had been imposed upon us by the General Conference of 1808, by which we were compelled to submit to the burden until permitted to relieve ourselves by the concurrence of all the Conferences in the Union. This unwise provision put it completely in the power of a very small minority to rule the whole body on any question arising out of the Restrictive Rules. From such a grievous yoke,

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‘which neither we nor our fathers was able to bear,’ the General Conference of 1828 made an effort to break loose.”

The following are the steps by which they did break loose:

On May 15th, 1828, Wilbur Fisk submitted a resolution, also signed by Joseph A. Merrill, as follows:

“Resolved, That this General Conference respectfully suggest to the Annual Conferences the propriety of recommending to the next General Conference so to alter and amend the rules of our Discipline, by which the General Conference is restricted and limited in its legislative powers, commonly called the Restrictive Rules, number six, as to read thus: *Provided*, nevertheless, that upon the joint recommendation of three-fourths of all the Annual Conferences, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions, or whenever such alterations shall have first been recommended by two-thirds of the General Conference, then so soon as three-fourths of said Annual Conferences shall have concurred with such recommendations, such alteration or alterations shall take effect.” [Journals of the General Conference, Methodist Episcopal Church, Vol. I, 1796-1836, pp. 331-332.]

This gave the power of initiation to the General as well as the Annual Conferences, but continued the Annual Conference as the unit in voting on constitutional matters, merely making it impossible for a less number than a fourth of the Conferences to block such changes as might be desired. No exceptions were made. *Any* restrictive rule could be thus amended. It evidently did not meet the desires of the General Conference in at least two respects, viz: initiation of constitutional changes by the General Conference and protection of the first “Article,” i.e., the first Restrictive Rule, for when called on May 21, it read as follows:

“That this General Conference respectively suggest to the several Annual Conferences the propriety of recommending to the next General Conference so to alter and amend the rules of our Discipline, by which the General Conference is restricted and limited in its powers to make rules and regulations for our Church, commonly called the Restrictive Rules, as to make the proviso at the close of said Restrictive Rules, No. 6, read thus: ‘*Provided*, nevertheless, that upon the joint recommendation of three-fourths of all the Annual Conferences, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of the above restrictions except the first Article.’”

This restored the rights of the Annual Conferences, as the only bodies having the right to initiate constitutional changes, and gave such protection to the first Restrictive Rule as the Conference desired. But it still left the matter of constitutional changes in such state as that one-fourth of the Annual Conferences could prevent any desired alterations—i.e., it left the Annual Conference as the constitutional unit. But that was exactly the thing from which they were trying to escape. That was the “yoke” which they could not bear. Up to and including the General Conference of 1808, the constitutional unit had been the *members of the several Annual Conferences*, and after further thought, they turned back to the original method. The General Con-

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ference had adopted the suggestion to the Annual Conferences above quoted, but now it reconsidered the vote and appointed a special committee of three to bring in another report, Wilbur Fisk being the chairman. On May 22, the committee reported as follows:

"Resolved, That this General Conference respectfully suggests to the several Annual Conferences the propriety of recommending to the next General Conference so as to alter and amend the rules of our Discipline, by which the General Conference is restricted in its powers to make rules and regulations for the Church, commonly called the Restrictive Rules, as to make the proviso at the close of said Restrictive Rules, No. 6, read thus:

"Provided, nevertheless, that upon the concurrent recommendations of three-fourths of all the members of the several Annual Conferences who shall be present and vote on such recommendation, then a majority of two-thirds of the General Conference succeeding shall suffice to alter any of such regulations, excepting the first article.

"And, also, whenever such alteration or alterations shall have first been recommended by two-thirds of the General Conference, so soon as three-fourths of the members of the Annual Conferences shall have concurred, as aforesaid, with such recommendation, such alteration or alterations shall take effect."

This was the "suggestion" sent down to the Annual Conferences, voted upon affirmatively by them under the then existing constitutional requirements of the "joint recommendation of all the Annual Conferences," and completed by a two-thirds vote of the General Conference of 1832.

What did the General Conferences of 1828-1832 do by the action above referred to?

In the first place, they substituted the *"members of the several Annual Conferences"* in place of the *Annual Conference* as the constitutional unit. We know of but two Methodist historians who have argued to the contrary, and they only with reference to the first Restrictive Rule. Doctor, afterward Bishop, John J. Tigert, in his *Constitutional History of American Episcopal Methodism* (Fifth Edition, pp. 489-491) discussing the subject "Are the Doctrinal Standards Unchangeable?" and referring to his discussion of the same subject in the body of his history (p. 404), concludes that the phrase, "excepting the first article," means that it is still under the rule of 1808—i.e., that the Annual Conference is still the constitutional unit in any attempted change of this article. In this opinion he followed the idea of Bishop H. N. McTyeire, who, in his *History of Methodism*, published in 1884, wrote (p. 595): "The first restriction, which guards doctrines, remains as it was originally." These two men were among the greatest we have ever had, and it is not possible to laud them too highly. In our opinion they were mistaken in their interpretation of the action of the Conferences of 1828-32. Even Bishop Tigert himself, after giving the history of the action of 1828, and in the face of his arguments, says:

"The original provision in the Constitution of 1808 put it in the power of a single small Annual Conference to defeat the will of the remainder of the Church; and Fisk's original proposition put it in the power of any group

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of Annual Conferences, greater than one-fourth of the whole number, however small and however feeble their minority, to defeat a Constitutional change. This feature of the Constitution of 1808 was evidently borrowed from the Constitution of the United States; and Fisk, at first, inadvertently retained the same principle. The truth is that the several Annual Conferences bear no such relation to the Connection . . . the undivided body of itinerant preachers—this, and this only, was the original or primary constituency which gave existence to the delegated General Conference and prescribed the Constitution which defines its powers. Afterward in both Episcopal Methodisms this primal body admitted the laity to a share of the government. It follows that whether a majority of those favoring a constitutional change be concentrated in one Annual Conference, or be scattered through them all, their will should prevail. And for this the measure of 1828, as adopted, provided. The Annual Conference rightfully ceased to be in any sense a constitutional unit." (Page 402, Sixth Edition.)

We entirely agree with this statement.

On the other hand, many historians take the position which we have announced. Bishop Paine, in his *Life and Times of William McKendree* (Vol. I, p. 26), says: "The proviso at the close of the Restrictive Rules, which rendered it necessary to obtain 'the joint recommendation of all the Annual Conferences,' to enable the General Conference to change any part of the constitution of the Church, was stricken out, and 'the concurrent recommendation of three-fourths of all the members of the several Annual Conferences who shall be present and vote on such recommendation,' was substituted." In his *History of the Methodist Episcopal Church*, Vol. IV, pp. 103-105, Nathan Bangs interprets the action of the Conference of 1828 in the same way. Both were members of that Conference and ought to have known what was intended.

Robert Emory (a son of Bishop John Emory who was also a member of that Conference) in his *History of the Discipline of the Methodist Episcopal Church*, says, "The former proviso, at the close of the Restrictive Rules, was struck out, and the following substituted—" (p. 113). Bishop Neely says: "The effect of the vote in the Annual Conference, and the concurrence of the General Conference, was to substitute the new provision for amendments to the constitution for the one which had stood since 1808." (*The Governing Conference in Methodism*, p. 405.) Dr. Buckley writes: "Some who feared that, under this Rule, our Standards of Doctrine could be easily mutilated, have tried to prove that the First Restrictive Rule could be changed *only* under the old law; that is if *all* the Annual Conferences by a majority vote should agree to change the said Rule, and the ensuing General Conference should ratify the same by a vote of two-thirds. That method was annihilated and another put in its place and the idea that it could be called from its grave in which it had been for half a century is without support." (*Constitutional and Parliamentary History of the Methodist Episcopal Church*, p. 233.)

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This seems the only logical interpretation to put on the language of the Proviso adopted in 1832. It begins:

“*Resolved*, That this General Conference respectfully suggests to the several Annual Conferences the propriety of recommending to the next General Conference so to alter and amend the rules of our Discipline, by which the General Conference is restricted in its powers to make rules and regulations for the Church, commonly called the Restrictive Rules, as to make the proviso at the close of said Restrictive Rules, No. 6, read thus: . . .”

We cannot escape the conviction that all which follows the word “thus” in the above quotation is a substitute for the proviso of 1808, and that after 1832 the old proviso in toto had no further place in the Constitution of the Church.

In the second place, the General Conferences of 1828-32 made it impossible to change the First Restrictive Rule unless and until, by constitutional process, the phrase, “excepting the first article,” should be stricken from the Constitution either by direct repeal or by substituting for it some method of amending the First Restrictive Rule. The process would be the “concurrent recommendation of three-fourths of all the members of the several Annual Conferences who shall be present and vote on such recommendation, then a majority of two-thirds of the General Conference succeeding.” This position is supported by Bishop Neely. (See *The Governing Conference in Methodism*, p. 406.) Buckley takes the same position (*Constitutional and Parliamentary History of the Methodist Episcopal Church*, p. 233). Other than this there is no legal way to amend the First Restrictive Rule. We think the General Conferences of 1828-32, and the Annual Conferences of that quadrennium, meant to make it a long-drawn-out and difficult thing to change any Article of Religion or existing standard of doctrine, while, at the same time, they rid themselves of the embarrassing “yoke” of the Annual Conference as a constitutional unit; and we think they succeeded in their undertaking.

Either that is the process by which provision may be made for amending the First Restrictive Rule, or else the power to initiate the establishment of such a method for amending the First Restrictive Rule has rested since 1832 in the members of the several Annual Conferences.

If it has rested there, then when that membership approved the Plan of Union under consideration and authorized its adoption, they did initiate such a process.

So, in either case, the process for amending the First Restrictive Rule as set forth in the Plan of Union has been legally approved.

Although, as shown above, the Plan of Union, constitutionally adopted, does change the method or process by which the First Restrictive Rule may be amended, the contention that the Plan of Union actually changes the Restrictive Rule, or any Article of Religion, is untenable.

It has been seriously urged that the Plan of Union amends or alters the XXIII Article of Religion. As hereinbefore stated, the Plan of Union pro-

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vides that the Articles of Religion of the Methodist Church "shall be those historically held in common by the three uniting churches."

That this provision does not amend, alter, or change the XXIII Article of Religion is clearly shown by a comparison of this Article of Religion as it appears in the Discipline of the respective churches uniting.

Methodist Protestant Church:

"The President, the Congress, the General Assemblies, the Governors, and the Councils of State, as the delegates of the people, are the rulers of the United States of America, according to the division of power made to them by the constitution of the United States, and by the constitutions of their respective States. And the said states are a sovereign and independent nation." (Discipline, Methodist Protestant Church, 1932, p. 41.)

Methodist Episcopal Church:

"The President, the Congress, the General Assemblies, the Governors and the Councils of States as the Delegates of the People, are the Rulers of the United States of America, according to the division of power made to them by the Constitution of the United States and by the Constitutions of their respective States. And the said States are a sovereign and independent Nation, and ought not to be subject to any foreign jurisdiction."

The following is placed in the Discipline as a footnote to Article 23:

"As far as it respects civil affairs we believe it the duty of Christians, and especially of all Christian Ministers to be subject to the supreme authority of the country where they may reside, and to use all laudable means to enjoin obedience to the powers that be: and therefore it is expected that all our Preachers and People, who may be under the British or any other Government, will behave themselves as peaceable and orderly subjects." (Discipline, Methodist Episcopal Church, 1936, p. 31.)

Methodist Episcopal Church, South:

"The President, the congress, the general assemblies, the governors, and the councils of state, as the delegates of the people, are the rulers of the United States of America, according to the division of power made to them by the constitution of the United States, and by the constitutions of their respective states. And the said states are a sovereign and independent nation, and ought not to be subject to any foreign jurisdiction."

The following is placed in the Discipline as a footnote to Article XXIII:

"It is the duty of all Christians, and especially of all Christian ministers, to observe and obey the laws and commands of the governing or supreme authority of the country of which they are citizens or subjects, or in which they reside, and to use all laudable means to encourage and enjoin obedience to the powers that be." (Discipline, Methodist Episcopal Church, South, 1934, p. 27.)

Again we refer to history. The General Conference of 1906 was informed by some of our missionaries that their work in foreign lands was being hindered because it was alleged their converts were compelled to pledge allegiance to the United States. The matter was referred to a committee, which reported that to insert the phraseology desired into the Discipline for churches

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in other countries than the United States, would be to affect the XXIII Article, and that it must therefore take the course prescribed for such a constitutional change. After much delay the vote was finally brought to a close at the General Conference of 1922, the exact lines marked out by the General Conference of 1906 having been followed. Since that time the above statement has appeared as a footnote in the Discipline of the Church in the United States, and as the only Article XXIII in the Discipline of the Church in foreign lands.

We call attention to the following facts:

(a) Article XXIII has never been changed for the home church.

(b) Of those Mission Conferences in behalf of which this statement was made only China and Cuba remain. Japan, Korea, Mexico, and Brazil have autonomous Churches, with Articles of Religion which they have chosen and which are not in total agreement with ours. Moreover, China has authority from the General Conference to set up such a Church when they and we think the time is ripe. Only Cuba remains of the ones in existence when this matter was first set on its way. Europe and the Congo have been established since, but a law that seems to have been nullified by the act of a General Conference in setting up these autonomous Conferences, without reference to the Annual Conferences, and that has lost its effectiveness in four out of six regions, can hardly be regarded as of great importance as a constitutional matter, especially when it has never been changed for the thirty-eight Conferences in the homeland.

(c) The Article in question is merely one which has to do with the Church's attitude toward civil government, and the difference in verbiage between the footnote in the Discipline of the Methodist Episcopal Church and the Methodist Episcopal Church, South, is not such as to make them differ in any material or substantial respect, nor to change in the slightest the meaning of the Article.

Moreover, as hereinbefore set forth, in 1832 the General Conference struck from the Discipline the process by which the First Restrictive Rule could be amended. Furthermore, as above set forth, the action of the General Conference in 1906 by which a provision for amending the First Restrictive Rule was passed was illegal. From 1832 to the adoption of the present Plan of Union no legal method had been provided for the amending of an Article of Religion.

If it be contended that the footnote of 1922 was legally adopted because of the process by which it was adopted had been initiated by the members of the several Annual Conferences in whom still rested all powers, withheld from the General Conference, and that this footnote was adopted in this manner and is therefore an Article of Religion and is eliminated by the adoption of the Plan of Union, then the elimination is just as legal as its alleged adoption in 1922.

It is further urged that the General Conference, in its action in 1906, was acting in a judicial capacity, and that the constitutionality of the method by which the footnote was added in 1922 is *res adjudicata*. With this contention

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we do not agree. In our opinion the General Conference was acting in a legislative capacity and not in a judicial capacity. As hereinbefore set forth, the General Conference does not have the authority to pass upon the constitutionality of its own acts.

There is no record of the Bishops having attempted to pass on the constitutionality of this 1906 action of the General Conference. Mere acquiescence in the presence of this provision in the Discipline and the following of the provision in administration and supervision do not constitute a judicial determination of such act.

We have read numerous decisions of courts of the land, both State and Federal, growing out of church divisions and church union, which in our opinion support the conclusion we have announced herein—viz., that the Plan of Union has been legally approved and union of the Churches legally authorized. We do not deem it necessary to cite them herein.

We are mindful of the well-established rule of legal interpretation that there is a presumption in favor of the constitutionality of the act of any legalislative body, and that such act should be held constitutional unless its unconstitutionality clearly appears. For the reasons herein above given, however, we do not find it necessary to invoke that rule to sustain the constitutionality of the action of the several Annual Conferences and of the General Conference in respect to said Plan of Union.

To sum up:

(1) There has been no material or substantial change in the XXIII Article of Religion from that historically held in common by the three uniting Churches, and even had there been, the adoption of that which was for foreign countries and is a footnote in our home Discipline, was not according to the legal method of making a constitutional change in the First Restrictive Rule, and therefore cannot be regarded as having the weight of an Article of Religion, but only that of a non-constitutional pronouncement of General and Annual Conferences.

(2) The insertion in the Discipline of the phrase, "which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding," by the General Conference of 1906, was clearly illegal. If it was meant as a part of the constitution, it would have had to go the rounds of the Annual Conferences, and have come back to the General Conference of 1910. It was never submitted to them.

(3) The General Conferences of 1828-32, and the Annual Conferences of that quadrennium, eliminated the Annual Conference as a constitutional unit and substituted therefor the members of the several Annual Conferences. The fact that one, or more, Annual Conferences should give a majority against a proposed constitutional amendment would avail nothing to prevent the change if three-fourths of the members of the several Annual Conferences, present and voting, followed by two-thirds of the members of the succeeding General Conference were in favor of and voted for it.

(4) The General Conferences of 1828-32 made it impossible to change the

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First Restrictive Rule unless and until, by constitutional process, the phrase, "excepting the first Article," should be stricken from the Constitution either by direct appeal or by substituting for it some method of amending the said Rule.

CONCLUSION

Answering the request and appeal of the College of Bishops, our conclusion is, and we so determine:

First—The actions of the members of the several Annual Conferences in approving the Plan of Union and authorizing its adoption, as reported to this General Conference, were and are legal.

Second—The action of the General Conference in ratifying and adopting the Plan of Union was and is legal.

Third—The action of the General Conference in approving and authorizing the union of the Methodist Episcopal Church, South, with the Methodist Episcopal Church and the Methodist Protestant Church was and is legal.

Fourth—The union of the three Churches, and the Plan of Union have been legally adopted, and the union has been legally authorized in accordance with said Plan of Union.

IV

THE SCHISM IN SOUTH CAROLINA

IT IS NOT STRANGE THAT THERE WAS OPPOSITION TO UNION IN THE Southern Methodist church. The wonder is that the Plan of Union passed so overwhelmingly. The Methodist Episcopal Church, South, after its separation from the Northern Methodist church had prospered greatly both spiritually and materially. At the time of union the Methodist Episcopal Church, South, had more than three million members and owned property, held by trustees, boards, commissions, and other agencies, for its use and benefit, including local churches, parsonages, hospitals, educational institutions, and publishing houses, valued at approximately four hundred million dollars. Its membership, the overwhelming majority of whom lived in the Southern states, were bound together by common Southern traditions, and its race relations, adjusted according to Southern traditions, were, in the opinion of the membership, good and constantly improving. There were many people in the Southern church who honestly believed that it would prosper more and do more good in its territory as a separate organization than as part of a larger organization, but they supported union against their local preference because they thought that a united Methodism would promote its world-wide mission. A small minority, unable to overcome local provincialism, violently opposed union.

Bishop Denny and Bishop Warren A. Candler always opposed it. Bishop Denny was on the committee which prepared the resolution of 1906, amending the Restrictive Rules. This amendment, had it been valid, would have made it difficult to adopt union. While the Plan of Union was before the Annual Conferences, during their 1937-38 sessions, Bishop Denny wrote articles opposing it in the religious press and addressed public meetings against union in Columbia and Florence, South Carolina; Savannah, Augusta, Macon, and Atlanta, Georgia; Nashville and Memphis, Tennessee; Birmingham, Alabama; and

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Lynchburg, Virginia. Collins Denny, Jr. addressed at least one opposition meeting in South Carolina—at Spartanburg.

In January 1938 an organization was formed by the opponents of union under the name of "The Layman's Organization for the Preservation of the Southern Methodist Church." Its officers were: J. W. Lipscomb, of Columbus, Mississippi, president; S. J. Summers, of Cameron, South Carolina, vice-president; G. G. Pike, of Columbia, South Carolina, secretary; and Miller R. Bell, of Milledgeville, Georgia, treasurer. To promote the organization, an official organ known as the *Southern Methodist Layman* was established and circulated throughout the South, particularly in South Carolina, where opposition to union was strongest. This publication was a violent and undignified sheet, as appears from this extract from the issue of February 2, 1940:

The big Moguls of Unification do not yet seem to be any too certain as to what to do with money contributed by Southern Methodists to the M. E. Church, South. They have repeatedly been put on notice that the Layman's Organization for the Preservation of the Southern Methodist Church will immediately file suit for the protection of these trust funds if and when they may attempt to divert, or even to consolidate them with the combine. One Unification Mogul, with around three million dollars in securities and recently with \$600,000.00 cash on hand, is still advertising for NEXT APRIL a meeting of his "Board" of METHODIST EPISCOPAL CHURCH, SOUTH. Although they all claim to be "united" in the combine, and "claim" this and "claim" that, still there is an uncertainty that is discomfiting to the Czars, but which comforts us. The Moguls, Czars, Ecclesiastical Despots, or what have you, know that such trust funds of the M. E. Church, *South*, as those in Church Extension, Publishing House, Superannuate Endowment, etc., are being watched with a thousand eagle eyes for their diversion to any other cause than for which they were created.

There was a reason why the opposition to union was stronger in South Carolina than in any other Southern state. South Carolina is the smallest state in the South in population, and naturally the most provincial. Its population is approximately two million, only a small majority of which is white, and in 1930, 99.4 per cent of its population was native born. There is in South Carolina a noble *savoir faire*, a pride of ancestry, a peculiar sensitiveness to outside interference, and a jealous desire to keep institutions as unchanged as the buildings on Charleston's Meeting Street and the Battery. South Carolina lay in the march

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of Sherman's army north from Savannah, its territory was ravaged and its lovely capital was burned. There, reconstruction was bitterest, lasted longest, and the memory still lingers.

Although the South Carolina conferences voted favorably for the adoption of the Plan of Union—and beyond doubt this vote represented the will of a majority of the Methodists in that state—there was a strong minority who had been induced to conceive of union as another Northern invasion, to be followed by a reconstruction of religious “modernism” and a readjustment of race relations. Accordingly, the minority planned a new secession. Somebody had caused them to believe that the titles to their local churches were held by their trustees for the exclusive use of the local congregations, and that a majority of the local congregation could alienate the titles of the local houses of worship from the trustees who held them under the customary trust clause, and vest them in new trustees to hold them in trust for the present and future members of the local congregation. They thought that by this device they could set up a local church organization pretending to be a continuation of the Methodist Episcopal Church, South, independent of The Methodist Church. No good people were ever worse deluded by bad advice.

In the little town of Turbeville, nestling among the pines of Clarendon County, South Carolina, stood the Pine Grove Methodist Episcopal Church, South, as little known to the outside world before the apple of discord was thrown into it, as Schecter's Live Poultry Market before the National Recovery Act. Its history is typical of pioneer Methodism in the South. It was founded some time in the 1850's, in the meeting of a small congregation under a brush arbor. A log building was erected, then a frame building, and finally the brick veneer building which still stands. At the time of church union its membership was about two hundred and seventy-five, evidently fine, conscientious people, deeply devoted to their local church, to the Methodist faith, and to the Southern Methodist church.

The church stood on ground, consisting of two acres of land, which on May 7, 1877, W. J. Gamble had conveyed to certain trustees of the Pine Grove Church,

to have and hold all and singular the above described plot of land in trust

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for said church as a church lot, and I do bind myself, my heirs and executors and assigns against any and all persons whatsoever claiming the same or any part thereof, for said church forever.

On October 16, 1897, W. D. Gamble conveyed the same tract of land previously conveyed by his father, to certain trustees, being the

Board of Trustees of the Methodist Episcopal Church, South, and to their successors in office . . . for the use and benefit of the public worship of God, to be applied by the said trustees to the object herein stated under the direction of the General Conference of the Methodist Episcopal Church, South, and the said trustees are to have and to hold the property for the use aforesaid.

As the meeting of the General Conference of 1938 approached, a schism broke out in the Pine Grove Church between those who favored and those who opposed union. The schism continued until after the Uniting Conference. On November 8, 1938, the church's Board of Stewards sent to Bishop Clare Purcell, then the bishop in charge of the area including the South Carolina conferences, a communication, a copy of which was sent to the Rev. C. C. Derrick, presiding elder of the district in which the Pine Grove Church is located. The letter stated that a majority of the church would not accept a preacher assigned by the conference then in session at Hartsville, and requested that the conference should not send a preacher to the Pine Grove Church. This communication was not answered by the bishop. On November 19, 1938, at the direction of the Board of Stewards, a second communication was sent to the bishop reiterating the position of the church with reference to union, and warning him that he need not anticipate the support of the Pine Grove Church financially or otherwise. The dissident members then requested the pastor to call a Church Conference, but knowing the purpose of it, he refused. The dissidents then, on April 13, 1939, posted notices calling a Church Conference for April 23, 1939. This conference, attended only by the dissidents, was held on the day fixed by the notice. At this conference, by a vote of 160 to 0, the trustees were directed to execute a deed to the church property to three trustees "in trust, for the use and benefit of the membership, present and future, of said Pine Grove Church." This was executed in accordance with such direction and duly recorded. Notice

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of this action was communicated to the Rev. L. D. B. Williams, the pastor, who had been duly assigned to the Pine Grove Church. The notice read:

Now, therefore, we are hereby serving notice that we, the duly authorized trustees of Pine Grove Methodist Episcopal Church, South, are assuming control and direction of such church property, and inasmuch as, according to the public press, the unification of the three branches of the Methodist Church will have been consummated on May 10, 1939, you are hereby strictly forbidden to use the above named church property for any purpose as a representative of the unified church, or as such representative to trespass on said church property.

Matters having coming to this pass, Bishop Purcell and the loyal members of the Pine Grove Church secured the services of Senator Henry R. Sims, of Spartanburg, R. E. Babb, of Laurens, and Colonel R. T. Jaynes, of Walhalla, all Methodists and leading members of the South Carolina bar, to file a complaint in behalf of the loyal members of the Pine Grove Church, to cancel the alienating deed; to enjoin the dissident members from interfering with the use of the church property by the loyal members and the regularly appointed pastor, and from using the name "Methodist Episcopal Church, South." Such a complaint was prepared and filed in the Court of Common Pleas of Clarendon County, South Carolina, and a temporary injunction obtained against interference with the church property and the services of the pastor, but no temporary injunction was granted against the use of the name.

The writer, having been previously employed to look after the interest of the church in any litigation which might arise over union, became associated with the attorneys in South Carolina. Later, Judge J. Morgan Stevens, of Jackson, Mississippi, former judge of the Supreme Court of Mississippi, and Judge Orville A. Park, of Macon, Georgia, were added as counsel for the plaintiffs.

After the filing of the Pine Grove case, smoldering dissent blazed in some eight or ten other local churches in South Carolina, resulting in alienating deeds, in the exact terms of the alienating deed in the Pine Grove case, which led to the inference that the dissent was organized and had a common adviser. Complaints were filed and temporary

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injunctions obtained against the dissidents in several of the churches where alienating deeds were made, and interference with the regular services of the united church was threatened. But by agreement, the Pine Grove case was made the test case, and trials were not had in the other cases pending the final judgment in the Pine Grove case, the understanding being that they would be controlled by that judgment.

The battle in the civil courts over the validity of union was then on.

V

THE PLEADINGS AND THE ISSUES INVOLVED

THE COMPLAINT IN THE PINE GROVE CASE ¹ WAS FILED AS A CLASS SUIT FOR and on behalf of Dan E. Turbeville and D. L. Green, individually and as trustees of Pine Grove Methodist Church at Turbeville, South Carolina; E. L. Green, individually and as trustee and steward of said Methodist church; E. R. Morris, M. L. Dennis, and D. Ed. Turbeville, individually and as stewards of said Methodist church, and John L. Green, a member of said Methodist church, individually, all on behalf of themselves and other members of The Methodist Church, formerly the Methodist Episcopal Church, South; the Rev. C. C. Derrick, as district superintendent of Kingstree District of the South Carolina Conference of The Methodist Church, and the Rev. L. D. B. Williams, pastor and/or preacher in charge of Pine Grove Methodist Church, at Turbeville, South Carolina, as plaintiffs; and against M. J. Morris, A. N. Coker, E. N. Green, H. W. Cole, F. B. Thomas, and W. L. Coker, as members or former members of Pine Grove Methodist Church, at Turbeville, South Carolina, in their own right and as representing all other members similarly situated, as defendants.

After setting out the names of the parties and the capacities in which they sued or were sued, as set out above, the plaintiffs alleged: that the Pine Grove Church had, from its organization prior to 1877, been a local church or unit of the Methodist Episcopal Church, South, and had regularly received the pastors assigned to it by the South Carolina Conference of that church; that the Rev. L. D. B. Williams was, at the time of the filing of the complaint, the regularly appointed pastor of the Turbeville-Olanta Circuit, of which the Pine Grove Church was one of the charges; that the Rev. C. C. Derrick was the duly appointed district superintendent of the Kingstree District which included the Turbeville-Olanta Circuit, and that both the district superintendent and the pastor had entered upon their duties.

¹ Turbeville, et al. v. Morris, et al. 26 S.E. (2nd) 821.

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The complaint alleged that the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church had each, acting separately, adopted the Plan of Union, and alleged the steps taken to effect the union, including the proceedings before the Judicial Council and the action of the Uniting Conference, and that The Methodist Church thereby became the successor of the Methodist Episcopal Church, South, and entitled to all of its property, property rights, powers and privileges, including title to the name "Methodist Episcopal Church, South."

The complaint further alleged that on May 7, 1877, W. J. Gamble conveyed to certain trustees the land on which the Pine Grove Church was located "in trust as trustees for the Methodist Episcopal Church, South . . . To have and to hold all and singular the above described plot of land for said church as a church lot. . . ." That on October 16, 1897, W. D. Gamble executed a deed to certain persons "the Board of Trustees of the Methodist Episcopal Church, South, and to their successors in office" to the same tract of land "for the public worship of God . . . to be applied by the said trustees to the object herein stated under the directions of the General Conference of the Methodist Episcopal Church, South."

It was further alleged that on November 8, 1938, the Board of Stewards sent a communication to Bishop Purcell, then at the South Carolina Annual Conference, stating that the majority of the membership of the Pine Grove Church would not accept or support a preacher sent to them by that conference; that acting under the pretended authority of a church conference called by certain members without the authority of the pastor, a deed was executed conveying the church property to new trustees elected by said conference to hold it for the use of "the present and future members of the Pine Grove Methodist Episcopal Church, South"; and on May 10, 1939, sent a communication to the Rev. L. D. B. Williams, the pastor, who had been assigned to said church, notifying him that the trustees to whom the church property had been conveyed were assuming control and direction of the church property, and that he was "strictly forbidden to use the above named church property for any purpose as a representative of the unified church, or as such representative to trespass on said church

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property," and that following such notice the dissident faction had arranged services in the church which conflicted and interfered with the regular services held under the pastor's direction.

Plaintiffs prayed for a judgment affirming the validity of union; for an injunction against interference with the regular services conducted by the pastor; for judgment declaring the alienating deed void and for its cancellation, and for an injunction against the defendants enjoining them from using the name "Methodist Episcopal Church, South," or any synonym or contraction of it.

The defendants, through their attorneys, the Hon. Collins Denny, Jr., of Richmond, Virginia, and the Hon. C. T. Graydon, of Columbia, South Carolina, filed an answer, part of which was in the nature of a cross bill. This was a voluminous document of forty-eight pages, containing much matter which was, on motion of the plaintiffs, stricken by the court as irrelevant and redundant. The answer denied many of the allegations of the complaint, but admitted (1) that the Pine Grove Church, since its organization, had been a local church of the Methodist Episcopal Church, South, and, as such, subject to the constitution and discipline of said church; (2) that from the organization of said church the property held for the benefit and use of its congregation had been kept, used, and maintained by said congregation and its officials and members of the Methodist Episcopal Church, South; (3) that its officials had maintained connection with the South Carolina Annual Conference of said church and had received from time to time pastors as ministers of the Southern church by appointment of the bishop presiding in the South Carolina Annual Conference in accordance with the usage and discipline of the church; (4) that the pastor [Williams] had been appointed to the circuit, including the Pine Grove Church, by the bishop presiding at the South Carolina Annual Conference; (5) that the Methodist Episcopal Church, South, had the inherent power to unite with the Northern church and with the Methodist Protestant Church, or with any other religious society; (6) that the question of the legality of the action of the General Conference in adopting the Plan of Union was submitted to the Judicial Council, and that it rendered a unanimous opinion affirming the legality of such union; (7) that the consent of the pastor in charge and of the Quarterly

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Conference was not had to the attempted alienation of the title of the property of the Pine Grove Church.

The defendants in their cross bill set forth, as reasons why the union was invalid, that the Twenty-third Article of Religion was changed; that the affirmative vote of each Annual Conference was necessary; that in adopting the Plan of Separation in 1844, votes were taken in the local congregations, in accordance with what they called the "common law" of the church; that free discussion of the last plan of union was suppressed by the leaders of the church; that the Plan of Union was improperly submitted to the Annual Conferences; that there were fatal inconsistencies in the Plan of Union; that the delegates to the Uniting Conference were improperly elected, in consequence of which their election was void, thus voiding the actions of the Uniting Conference.

A reply to portions of the cross bill, remaining after the irrelevant portions were stricken, was filed by the plaintiffs. From the following summary a very clear understanding may be had of the issues involved in the litigation.

In their answer the plaintiffs alleged that the Articles of Religion of The Methodist Church, adopted by the Uniting Conference and published in the *Journal* of that conference, are precisely the same as the Articles of Religion of the former Methodist Episcopal Church, South, and these articles are those historically held by the three uniting churches; that there was no change in the Articles of Religion of the Methodist Episcopal Church, South, but even if it could be conceived that the question of amending the Articles of Religion of the Southern church was involved, so as to bring them into accord with the historic Articles of Religion held in common by the three uniting churches, still, it was not necessary that the Plan of Union should receive the approval of each Annual Conference; that the legality of the adoption of union was duly referred to and passed upon by the Judicial Council, and that the question of the legality of the adoption of the Plan of Union was foreclosed by its decision, which was binding on defendants as to all questions of ecclesiastical law and of the constitution, legislation, usage, and government of the Methodist Episcopal Church, South; that the Judicial Council was the highest judicatory of the Methodist Episcopal Church, South; that the questions decided were within the

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jurisdiction of said Judicial Council; that the said questions were properly brought for its decision, and its decision requested in the manner provided by the constitution of the church; that the questions were fully argued before the said Judicial Council, both orally and by brief; that the council duly considered said questions and rendered an opinion, in which all nine members of the council concurred, in which all the questions raised by the defendants in their cross bill (par. 2) were decided; that the decision of the Judicial Council was and is made final, binding, and conclusive upon said church and its subordinate societies or local churches and, among others, is binding upon the Pine Grove Church and the membership thereof, including the defendants; that said questions, having been decided by the highest and final judicatory of said church, cannot now be re-examined in a civil court at the instance of the defendants who, as members of the church, are bound by said decision.

Plaintiffs further alleged that, in this class of cases, the rule of action which governs the civil courts, founded on the requirement of the separation of church and state under our system of laws, is that, whenever questions of discipline, faith, ecclesiastical rule, custom, or law, have been decided by the highest church judicatory to which the matter has been carried, the civil tribunals accept such decisions as final and binding upon them, in their application to the case before them. The civil court tries the civil right and no more, taking the ecclesiastical decision out of which the civil right arises as it finds it; that the Plan of Union was duly and regularly submitted to the several Annual Conferences of the Southern church and was adopted by them by a vote of more than three fourths of the membership of said conferences who were present and voting, and that it was duly and regularly submitted to the General Conference of said church which convened at Birmingham, Alabama, on April 28, 1938; that it was adopted after full debate, and after all questions raised or attempted to be raised by the defendants in their answer and cross bill were presented and considered, and was adopted by a vote of more than two thirds of said General Conference.

Referring to the allegations of the cross bill, that when the Plan of Separation was being considered in 1844, that there was wide popular discussion of it and that votes were taken upon it in many congregations,

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these allegations being made in support of the defendants' contention that the adoption of the Plan of Union should have been so discussed and voted upon, but that free discussion had been suppressed by a "conspiracy of silence," plaintiffs alleged that the question of the organization of a separate jurisdiction in the South was submitted to the Annual Conferences and not to the local congregations, or to the membership at large, that at that time the Annual Conferences were composed of ministers only, laymen not being members thereof and having no voice therein; that the Louisville Convention was composed of delegates elected by and representing the Southern Annual Conferences; that they did not represent or purport to represent the membership of the church at large; that the first General Conference of the Southern church was likewise composed of delegates elected by the several Annual Conferences and not by the membership of the local churches. They were all ministers or traveling preachers, laymen having no voice either in their selection or in the conference to which they were elected; that the meetings of the local churches referred to in the cross bill were entirely unofficial, and while they perhaps indicated the feeling of the laity of the church, they were in no sense necessary to the action taken by the conference in selecting their delegates to the Louisville Convention or to the Petersburg General Conference of 1846, nor were they in any sense necessary to the action taken either by said convention in providing the organization of the Southern church or the General Conference, which was the first General Conference thereof; that the Southern church was brought into existence by the Annual Conferences and not by the vote of the lay membership.

Answering further, plaintiffs alleged that the Southern church was a connectional church having a representative form of government; that it was not necessary to submit any question affecting the church, its government, or its constitution to the vote of the members of the local congregations; that the church in adopting the Plan of Union acted through the Annual Conferences; and by the delegates elected to said General and Annual Conferences, and that the only participation which the membership at large had in such action was by the election of the lay delegates to such conferences; that the vote in the Annual Conferences could be taken either before the question was submitted to

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the General Conference or after its adoption by that conference; that twenty-five of the thirty-eight Annual Conferences by formal resolutions requested the College of Bishops, before their meeting in December, 1936, to submit said plan to the conferences at their sessions in 1937, and the bishops, in compliance with that request, did submit the plan, and it was voted upon at the said 1937 sessions and adopted by a vote of 85.98 per cent of the members of the Annual Conferences who were present and voted thereon.

Answering the defendants' allegation that the Plan of Union was not properly submitted to the Annual Conferences, and consequently was not effectually approved by them, plaintiffs alleged that the question submitted by the bishops and voted on in all of the conferences composing the Southern church was as follows:

Shall the Annual Conferences of the Methodist Episcopal Church, South, approve and authorize the adoption of the Plan of Union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, as proposed and recommended by the Commission on Interdenominational Relations and Church Union, duly appointed by these three churches, and attached hereto?

Attached to the question was a copy of the report of the Commission on Interdenominational Relations and Church Union, which said that the plan had been published in the *Advocates*, the official periodicals of the church; that the plan of 1925 was adopted by more than two thirds of the General Conference, and was voted for by a majority of the members of the Annual Conferences, but failed to receive a three-fourths majority and so failed of adoption, but nothing done in 1925 has any bearing upon the question whether the present Plan of Union was legally submitted and adopted; that meetings were held in many congregations in 1937-38 for the purpose of considering the Plan of Union, but out of a membership of more than 2,800,000 the opposition, after strenuous efforts, was able to submit to the General Conference of 1938 petitions signed by only 18,000 members of the church opposed to the plan.

Answering further, plaintiffs denied that there were any inconsistencies in the Plan of Union which would render it incapable of being adopted and carried into effect, and alleged that, on the contrary, the

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Plan of Union follows closely the form of each of the three bodies entering the union, for a century of separate existence had not resulted in many variations; that there were no changes whatever in the historic faith of Methodism; that the union did not involve doctrine since all three churches had the same Articles of Religion as a common heritage from John Wesley himself, who selected and arranged them from the Anglican Prayer Book. The three Methodist bodies were prepared for organic union because they had (1) a shared history; (2) a shared philosophy; (3) a shared character; and (4) a shared form of government. This common heritage of history, faith, character, and government called for organic union and magnified the fact that Methodism has a common world task, and that it would have been exceedingly unwise for three Methodist bodies to have continued to go on their separate ways, when together they could more completely fulfill their mission, and give a more effective proclamation to the gospel of Christ. That a General Conference of the united church was provided for in the Plan of Union, and plaintiffs allege that the *Discipline* adopted by the Uniting Conference made clear and definite the provisions for such a General Conference, which General Conference was called and met in Atlantic City, New Jersey, beginning April 24, 1940; that delegates to such General Conference were duly elected by the Annual Conferences of The Methodist Church which succeeded the Annual Conferences of the former Methodist Episcopal Church, South; that the Jurisdictional Conference of the Southeastern Jurisdiction was appointed to be held at Asheville, North Carolina, beginning May 22, 1940, and that there were no inconsistencies or any irreconcilable provisions as to the election of delegates to said conferences; that the Uniting Conference, called and held pursuant to the Plan of Union, was duly authorized to speak for the three uniting churches and declare the Plan of Union to be the constitution of The Methodist Church, and whatever doubt may have existed theretofore as to what that constitution was, or is, was completely set at rest by this declaration.

The plaintiffs admitted that the procedure followed by the Annual Conferences in the election of delegates to the Uniting Conference was that the ministerial members of an Annual Conference elected ministerial delegates and the lay members elected lay delegates to the

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Uniting Conference. Plaintiffs alleged that said procedure was proper and legal, in that, ever since the conference of 1870 when, for the first time, laymen were admitted as delegates to the Annual Conferences and to the General Conferences, it had been the universal and unbroken custom in the Southern church for lay delegates to be elected by the laymen and the clerical delegates to be elected by the ministers, and that at no time have ministers ever voted for laymen as delegates to any conference of the Southern church, nor have laymen voted for ministers. The voting for the election of delegates has always been "by orders." The General Conference of 1938, in providing for the election of delegates from the Southern Annual Conferences to the Uniting Conference had in mind this plan of election, and by its action contemplated that this method would be pursued in the election of delegates to the Uniting Conference, both clerical and lay. The delegates so chosen by the several Annual Conferences were certified as delegates from the respective conferences and given appropriate credentials as such delegates, which credentials were received and accepted by the Uniting Conference and the delegates so chosen were regularly enrolled as members of said Uniting Conference; were seated therein and participated in all actions of the said Uniting Conference as members thereof and as delegates from the respective Annual Conferences which had elected them; plaintiffs specially denied that elections of delegates of the Southern church to the Uniting Conference were void and that the persons so elected were not legal delegates. Plaintiffs denied that no quorum of delegates from the Southern church was present and alleged that the Southern church was legally represented by 400 delegates duly and legally elected and seated as such, said quorum of delegates consisting of 380 elected by the several Annual Conferences and that these delegates so elected, together with the ten ministers and the ten laymen, members of the Commission on Church Union, constituted the 400 delegates legally representing the Southern church in said Uniting Conference, and plaintiffs denied that no quorum of delegates from each of the uniting churches, duly chosen, attended the Uniting Conference and were seated and participated therein.

Plaintiffs, further answering, denied the defendants' allegation that

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the union of said three constituent churches was not brought into existence by the action of the Uniting Conference; and plaintiffs alleged that the Uniting Conference was held in accordance with the Plan of Union and within the time specified; that after completing the transaction of business accomplishing the purposes for which it was convened, and setting up The Methodist Church, composed of the three constituent churches, it formally and unanimously adopted The Declaration of Union, in which it declared that the said three churches were and are one united church, and plaintiffs alleged that this action and declaration of the Uniting Conference had been fully recognized, approved, and ratified by each of the thirty-eight Annual Conferences which composed the Methodist Episcopal Church, South, by the bishops of said church, and by all of the boards and other agencies of said church, and the union so declared was a fact completely accomplished; that said Uniting Conference directed that the several Annual Conferences of the three uniting churches during the year 1939, at which sessions they should complete their work, should finally and forever adjourn as such conferences, and that successor conferences of The Methodist Church, composed of the ministers and delegates from all three of the churches located within the bounds of the conferences as set up and defined by the Uniting Conference, should convene within the year 1939, and should arrange for the carrying on of the work of The Methodist Church within the bounds of said respective conferences. Pursuant to this action of the said Uniting Conference, each one of the thirty-eight conferences of the Methodist Episcopal Church, South, did meet, in 1939, and did wind up its affairs and adjourn, and the members of said conferences, clerical and lay, uniting with the members of the Methodist Episcopal Church and the Methodist Protestant Church, within the territory set up and defined by the Uniting Conference, did meet and organize as Annual Conferences of The Methodist Church, assigned pastors to their respective appointments, selected and assigned the district superintendents, and otherwise provided for carrying on the work of the conferences. The bishops of the Southern church were, by the Uniting Conference, assigned to jurisdictions and to particular areas within those jurisdictions, and with the bishops of the Methodist Episcopal Church and the bishops elected

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by the Methodist Protestant Church, met and organized the Council of Bishops of The Methodist Church, and entered upon and were carrying on the work respectively assigned to them by the Uniting Conference and the Council of Bishops, and had inaugurated and were carrying on far-reaching plans for advancing the work of the united church throughout the world. The three great publishing houses of the three churches and their general boards, through which a large part of the connectional work had been carried on, had united and were functioning as agencies of The Methodist Church. The Annual Conferences of The Methodist Church, set up as hereinbefore mentioned, elected delegates to the General Conference of the church, which conference met and adopted legislation cementing the union of the three churches and provided permanent machinery for the carrying on of the work of united Methodism, not only in America but throughout the world, and the entire machinery of the united church had been set in motion and its great and far-reaching work was then being carried on as one united ecclesiastical body known as The Methodist Church.

The plaintiffs denied the contention of the defendants that the actions of The Uniting Conference were void and of no effect, and alleged that the Uniting Conference provided for in the Plan of Union did meet in Kansas City, Missouri, on April 26, 1939; that it was fully authorized to proceed; that the delegates to said conference were regularly and properly elected, and that the actions taken by it were legal and valid actions and had been recognized as such throughout the Southern Methodist church, as well as throughout the other two constituent churches, the Methodist Episcopal Church and the Methodist Protestant Church; that if there were any technical defects in the adoption of said Plan of Union, which the plaintiffs specifically denied, all such defects have been cured by the ratification of the several Annual Conferences of the Methodist Episcopal Church, South, the bishops and other authorities of the church, and the recognition of the validity of the union of the three churches, which is an accomplished fact; that in the Declaration of Union at the closing session of the Uniting Conference, at Kansas City, on May 10, 1939, it was declared in the fourth and fifth paragraphs that:

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The Methodist Episcopal Church, The Methodist Episcopal Church, South, and The Methodist Protestant Church, in adopting the name, "The Methodist Church" for the United Church, do not and will not surrender any right, interest or title in and to these respective names which, by long and honored use and association, have become dear to the ministry and membership of the three uniting Churches and have become enshrined in their history and records.

The Methodist Church is the ecclesiastical and lawful successor of the three uniting Churches, and through which the three churches as one United Church shall continue to live and have their existence, continue their institutions, and hold and enjoy their property, exercise and perform their several trusts under and in accord with the Plan of Union and *Discipline* of the United Church; and such trusts or corporate bodies as exist in the constituent churches shall be continued as long as legally necessary.

The plaintiffs filed a supplemental complaint after the meetings of the Annual Conferences of 1939, alleging the ratification by them, and especially of the North Mississippi Annual Conference, of the Plan of Union.

Succinctly summarized, the contentions of the plaintiffs, who asserted the validity of union, were: (1) that the adoption of the Plan of Union by the General Conference of the Methodist Episcopal Church, South, was in pursuance of due antecedent constitutional processes; (2) that the legality of the adoption of the Plan of Union was conclusively adjudicated by the judgment of the Judicial Council; (3) that the Uniting Conference, composed of delegates duly elected by the uniting churches, perfected the union under the name "The Methodist Church"; (4) that by virtue of the union The Methodist Church became the successor of the Methodist Episcopal Church, South, and, as such, succeeded to all the property, property rights, powers, and privileges of the Methodist Episcopal Church, South; (5) that those members of the Pine Grove Church who adhered to The Methodist Church constituted its true congregation and were entitled to the exclusive possession and control of the church property; (6) that the deed attempting to alienate the church property was void (a) because it constituted a violation of the trust under which the property was held; (b) because the conditions under which local church property can be sold did not exist; that is, it was not being moved to a new location and the church was not going out of existence; (c) because the alienat-

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ing deed was not authorized by the Quarterly Conference with the consent of the pastor and no authority existed in a Church Conference to authorize a transfer of the title to the property; (7) that the name Methodist Episcopal Church, South, was a property right which passed to The Methodist Church; and (8) that the use of the name Methodist Episcopal Church, South, by another religious society organized and operating in the same territory was illegal under the law of Unfair Competition.

The contentions of the defendants, who denied the validity of union, were: (1) that the Plan of Union, which provided a method of changing the Articles of Religion without the approval of each of the Annual Conferences, violated the Constitution of the church; (2) that the judgment of the Judicial Council was arbitrary and not binding on the civil courts because it was contrary to what, as they contended, was the constitutional law of the church; (3) that the constitutional law of the church had been judicially determined that the only method of changing an Article of Religion was by a vote of each Annual Conference by the action of the General Conference of 1906, and by subsequent acquiescence; (4) that the Uniting Conference was not legally constituted and its actions were void because the delegates to it were elected by "orders," which was not a legal compliance with the provision of the Plan of Union that such delegates were to be elected by the several Annual Conferences; (5) that by the unwritten constitutional law of the church, union could not validly be adopted without submission of the question of union to the membership of the church and allowing members to vote directly upon the question; (6) that the title to the local Pine Grove Church was vested exclusively in the members of that local church, and that they could convey it to its "present and future members," without the action of the Quarterly Conference and the consent of the pastor; (7) that by reason of the invalidity of union, those who refused to adhere to the united church remained members of the Methodist Episcopal Church, South, and had a right to continue the local church as such unaffected by the attempted union under that name.

The issues being joined on the pleadings, the next step was to proceed with the taking of the testimony, briefs of which are set out in the succeeding chapters.

VI

BRIEF OF THE TESTIMONY OF BISHOP COLLINS DENNY ¹

[Examined on behalf of Defendants]

I RESIDE AT 1619 PARK AVENUE, RICHMOND, VIRGINIA, WILL BE EIGHTY-SIX years old in eleven days, and am a bishop of the Methodist Episcopal Church, South. After attending for a number of years, from the time I was quite young, the Shenandoah Valley Academy, in Winchester, Virginia, I spent four years at Princeton. Then I went to the University of Virginia to study law under John B. Minor; then I practiced law for two years and a half; then I entered the ministry of the Methodist Episcopal Church, South, and went through the regular course of study as applicable at that time, receiving my appointment as any other Methodist preacher, for about ten years, when I was elected chaplain of the University of Virginia, where I remained for two years, during which time I also became a student in the University of Virginia again. Then I was elected professor of mental and moral philosophy in Vanderbilt University, and there remained for nineteen years, until I was elected a bishop of the Methodist Episcopal Church, South, in the year 1910. I took my Bachelor of Arts degree and Master of Arts degree at Princeton. I took my law degree at the University of Virginia, and then I took my degrees in the schools of English, philosophy, and Anglo-Saxon in the University of Virginia while I was chaplain. I joined the ministry in 1879, and was active in the pastorate until I went to the University of Virginia as chaplain in 1889.

Beginning with 1894, I was a member of every General Conference until I was elected a bishop in 1910, and then was, of course, one of the officers of the General Conference, through the last session of the General Conference of the Methodist Episcopal Church, South, which session was held in Birmingham, Alabama, the latter part of April and early part of May 1938. I am a member of the Baltimore Conference. I not only had occasions to familiarize myself and pay special attention to the law and history of the Southern church, but I felt it to be my

¹ In consideration of his advanced age, the testimony of Bishop Collins Denny was taken by deposition at his home in Richmond, Virginia. The direct examination was by Mr. Collins Denny, Jr., and the cross-examination was by Mr. Park and Mr. McElreath.

The footnotes refer to the documentary evidence referred to and introduced during the taking of the oral testimony at the points indicated.

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duty to do so as a minister, and later as one of the bishops of the church. I have known all the leaders of the church since early in my life because my father's home was a preacher's home, and my grandfather and my uncle were preachers before me. I have entertained nearly all the bishops of the church since I entered the ministry at one time or another. I have had access to all the official documents of the church, and have copies of all the official documents of the church. Then I was assigned the duty of writing the law book of the church, known as the *Manual of the Discipline*, and I prepared three editions of that book under the instructions of the College of Bishops, and made it my business, whenever I could lay my hands on any manuscript material, to get access to it and to read it, and I have a good deal of manuscript material here in the home. Since I was twenty years of age I have been engaged in a study of the law and history of the church. If there be any published official documents of the church that I have not examined, I do not know it. I possess most of those documents in my library; the only complete set I know of in existence. I knew Bishop A. W. Wilson intimately from the time I can remember. With the possible exception of Bishop McTyeire, who was an older man than Bishop Wilson and who was elected bishop in 1866, we had no man in the church in my lifetime who has, by anybody, been put on a level with Bishop Wilson in connection with his legal ability and knowledge. I do not need to go into his preaching ability. I was very many times Bishop Wilson's guest in Baltimore. From about 1898 he was always my guest when he came to Nashville. We traveled around the world together—I was appointed to go around the world on a visitation of our missions. We traveled around the world together. We corresponded very intimately and, as nearly as a man young enough to be his son, I was as intimate with him as it was possible for one man to be with another.

On my entrance into the College of Bishops, as a member, at the very first session I attended they elected me as the secretary of the college and I remained as secretary until I resigned some time in the twenties. During that time, over my protest, the College of Bishops assigned to me the responsibility of writing the book entitled *Manual of the Discipline of the Methodist Episcopal Church, South*. I prepared three editions of it, the last one in 1931. When there were any vetoes, as they were called, to be prepared by the bishops, they assigned me to prepare them. I was a member of all, except one, of the commissions appointed to draw up a constitution for the church. In addition to that, the General Conference of 1910 called on the bishops to prepare and publish a statement of the constitution of the church. Bishop Wilson was then the chairman of the College of Bishops, as he was from the

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retirement of Bishop Keener in 1898 until his retirement. As was customary, the College of Bishops left to him the appointment of the subcommittee to attend to that work ordered by the General Conference. He appointed a committee of five. Bishop Candler, Bishop Atkins, Bishop Murrah, and I were members of it. I do not remember the others. Bishop Wilson then directed me to make a study and to prepare a paper, which I did, on his agreement that he would make that announcement to the College of Bishops, and that before the paper was presented I should read it to him in manuscript, and he should make any corrections and suggestions that he thought proper, and that was done and approved unanimously by the College of Bishops, and is published in the *Journal* of the General Conference of 1914.

The origin of Methodism in America is a little obscure. It is known, however, that, owing to poverty, two men—Robert Strawbridge, who came to what was then Frederick County, Maryland, and Philip Embury, who came to New York, being from the Palatinate Jews—there has been a dispute from the beginning concerning the priority of Strawbridge and Embury. Embury did not itinerate or travel around and preach from place to place. He preached solely in New York City, in different buildings as they were available. Strawbridge, who was an itinerant and intensely religious man, began at once to preach and to itinerate and travel through Maryland, as then settled, across the Potomac into Virginia, and got among his followers some of the ablest of the early preachers. Nobody knows exactly when Embury and Strawbridge began. Those who think a great deal depends upon priority have been very intense about that, and consequently have said a good many things that better have been left unsaid. Even our General Conference undertook to pronounce on a question of history—settled it by vote.

In 1769 John Wesley, having been appealed to to send over some preachers—for those were just young men raised up by Strawbridge, I don't know anybody who was raised up by Embury; but these men raised up by Strawbridge were young fellows, fiery, enthusiastic, ready to suffer anything, but only gathering experience as they went along, having nobody to whom to turn to except Strawbridge—Wesley sent over his first two preachers.

In 1771 he sent over two preachers, Francis Asbury, who became the greatest of all the earliest Methodists or bishops and next to Wesley, perhaps the greatest of all Methodists. And then along until the opening of the Revolutionary War. Now the work developed rapidly. Wesley appointed a man to take charge. He called him an assistant. The first one was Rankin. Discipline was very rigidly enforced.

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Rankin rendered himself obnoxious by the rigidity of his discipline. All the English Methodist preachers—no one of them, by the way, being ordained—being so far as church custom is concerned laymen, were driven or went out of the country, except Asbury. Asbury went into the swamps of Delaware because he could not take the oath in Maryland or Virginia, and he was in hiding there. But he said he did not propose to give up the people that the good Lord had given him in America, and he stayed here, and he crossed the Atlantic once—only once.

They began to hold what they called conferences; the first one was held in Philadelphia in 1773. They were held yearly after that through 1784. Sometimes they held two, one north of the Potomac and one south. That was on account of the condition of things in the Revolutionary War, and Asbury was not able to go down into this section which was where the larger part of the Methodists lived.

There was a question raised about the administration of the sacrament. There was not an ordained Methodist preacher in America, unless Strawbridge had been ordained by Bishop Otterbein of the United Brethren Church, as is suspected, and by some writers rather positively asserted. As far as I am concerned, I have never seen proof of it.

Up at the Brokenback church in Fluvanna County, Virginia, now Brokenback—I suspect it was Brokenbrough because there was a family of Brokenbroughs up there. Well, in Brokenback church the preachers held a meeting. They ordained each other in 1777. That shocked Asbury, who was a man of order—his order. He wasn't so careful about other people's orders. He slipped through the lines here into the Huguenot church at Manakin and held a General Conference—attended the conference the next year, and through his influence got the preachers to rescind the action, and to make another appeal to Wesley to get some ordination for at least one Methodist preacher in America. Wesley tried that through the Church of England. So far as the Church of England was concerned, Virginia was under the jurisdiction of the Bishop of London. Methodism claimed to be part of the Church of England, Wesley's idea being to reform, spiritualize the Church of England; and he never separated from the Church of England, and there wasn't life enough in the Church of England to turn him out. It was dead, as you can find from all the historical writings of the time, especially from Leckey's great book *History of England in the Eighteenth Century*. Wesley, finally finding that the work over here was to be given up or else he had to act, ordained Whatcoat and Vasey, two of his preachers. He ordained them deacons and elders; and then, with the assistance of a clergyman of the Church of England, Creighton,

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and these men that he had ordained, he ordained Dr. Coke, who was a clergyman of the Church of England, a graduate of Oxford. He ordained him a superintendent of the Methodists in America. Wesley was afraid of the association of names or words; he utterly despised the word "bishop." "Priest" took him too close to the Roman Catholic Church. So he called the bishops "superintendents," and he called what the Church of England denominated "priests" as "elders," and held onto the word "deacon," and Coke and Whatcoat and Vasey came over here in the fall of 1784. They met Asbury in Delaware, at Barrett's Chapel in November. There were an indefinite number of preachers, and they were at Barrett's Chapel on that occasion, ten or a dozen at any rate. It was a Quarterly Conference meeting. They were great occasions among Methodists at that time. Coke and Asbury met there for the first time. Asbury, knowing the Americans, said that they must have a General Conference and it ought to meet at once. Coke wanted to put Wesley's plan into operation instantly. Asbury, of course, prevailed, knowing more than Coke did, and one of the preachers went out to summon all of the Methodist preachers to whom he could get word—there were about eighty—to meet in Baltimore on Christmas Eve, 1784, and about sixty of the preachers met there. No laymen were present, no ordained minister among them, except Dr. Coke, no college men among them, except Dr. Coke. I believe John Dickens had been to one of the schools of England, but never to any of the colleges. There they organized the Methodist Episcopal Church in America. They elected a certain number of elders and deacons, chiefly for the purpose of administrating the sacrament to the people.

Wesley, with his domination, and I don't mean to reflect on him, of course—under God, all Methodism was due to John Wesley and he never let go his control—he appointed Coke and told Coke to ordain Asbury. Asbury said, "I will be ordained if my brethren select me." As I say, he knew the Americans, and Coke and Asbury were elected bishops, Coke having been ordained and he ordained, with the assistance of Whatcoat and Vasey, and then Bishop Otterbein being called in by Asbury, who knew him well, ordained Asbury a bishop.

The main plan of administration set up at the first General Conference of 1784 and its main features were, in the first place, the forming of a Discipline. They took the General Minutes, as they were called in the English church, and what was applicable to America they adopted; what they needed they added in order to get the church started in a little more orderly manner than had been going on from the years of Strawbridge and Embury up to 1784. They preserved and continued the appointment of preachers. They did not make any provision for a

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subsequent meeting of the General Conference; the preachers were to meet at the call of the bishops, who should not be less than three, and might be increased to a larger number; that the bishops should call together at a convenient place what we now call an Annual Conference, but it had no definite boundaries, nor definite number, and it consisted only of the preachers.

The plan which was adopted and followed in the years immediately following 1784, was that the bishops called together the preachers within a particular area, met with them, and then proceeded on to another area, and this plan prevailed until 1789, when they organized what they called a council which had advisory powers. They met two years and that proved to be unsatisfactory. Then they called a General Conference for November 1792, and at that General Conference they made provision for quadrennial meetings of the General Conference, which have been held ever since. Students of Methodist history are agreed on the point that in the early days of Methodism, and prior to 1808, complete power in the church was vested in these mass gatherings of all the preachers which were termed General Conferences. I read recently in the *Daily Advocate* of the General Conference of The Methodist Church, which met in Atlantic City, that Dr. J. S. French, who was an associate of Brother Park on the Judicial Council, filed a minority opinion on another point than this point of the power of the Conference of 1808. The Annual Conferences, as now known in Methodism with fixed boundaries and membership, were created in 1796. Prior to that, they had what were called District Conferences, which must not be confused with our present District Conferences. They changed them to yearly conferences, and then, in 1796, gave them fixed boundaries and called them Annual Conferences, in which each minister became a member of the Annual Conference in whose boundary he worked. We also had General Conferences which met in 1800, 1804, and 1808.

At first the General Conference included all the Methodist preachers. Later on, in 1792, they confined it to those who had traveled two years or who had been, as it is still termed, admitted into full connection. Then the qualifications were changed until they must have traveled four years from the time they were admitted on trial. Roads were poor. Justice Patterson broke his shoulder traveling, and Governor Morris lost a leg traveling along what they called roads. John Marshall's son was killed on his way from here to Philadelphia, on account of the roads. Nobody seemed able to get over the roads except the Methodist preachers—they got over them. Asbury said he traveled seventy-five miles a day—I remember on one occasion when he mentions that—and fre-

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quently fifty miles. The General Conferences were all held in Baltimore. We were working on the banks of the Mississippi, and the two Annual Conferences, Baltimore and Philadelphia, were held there because they were close at hand, and the other four Annual Conferences extended way out into the West. We had hardly gotten across the river to do much, except in St. Louis, and we entered New Orleans, where we have never been able to do much, after the Louisiana Purchase. They petitioned the Conference to have a delegated General Conference, and after a long debate in 1808, they agreed upon a delegated General Conference. They drafted a constitution for that General Conference which, strange to say—indeed, so far as my knowledge goes—most people confuse with the constitution of the church. The more careful writers, of course, distinguish between the constitution of the General Conference and the constitution of the church. They formed, after long debate, the constitution of the General Conference, and that took up most of the work of that General Conference. From that time on, the General Conference had authority to make rules and regulations for the church under six specific restrictions, known as the Restrictive Rules, with a proviso for their amendment.

The legislation adopted by the General Conference of 1808 was set forth in the *Journal* and in the *Discipline*, but a point that has escaped the attention of too many writers is that the editor of that *Discipline*, whoever he may have been, did not exactly follow the actions of that General Conference in the order in which it was published. It is my supposition that he wanted to print things in a more logical order. In editing the *Discipline* of 1808, the editor, to my knowledge, did not in any sense change the meaning or change the phrasology of the General Conference. His editing was simply a rearrangement of the chronological form in which the various actions were published, and having under the head of General Conference only what he thought applied to the General Conference, and when it came to the officers he put under that head equally constitutional matter, which applied simply to them. For instance, the bishops who should appoint the preachers to their work. Well, that was a matter of long discussion in itself in 1808, and was passed right in the middle of the consideration of those Restrictive Rules and is, of course, of equal validity.

The publication of the chapter on the General Conference as it appears in the *Discipline* of 1808, differing in the respect which I have mentioned from the *Journal*—but not differing in meaning and not differing in language—has been unanimously accepted all during the years as the action of that General Conference, and this arrangement, as it appears in the *Discipline*, has become the accepted arrangement

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through all the years in the Methodist world. [Here was introduced a photograph of the chapter "Of the General Conference," from the *Discipline* of 1808.]

From 1808 to 1844 there have been repeated changes in the Restrictive Rule that determines how many members of the Annual Conference entitles that conference shall have to one member in the General Conference. It started out with five to seven, and that was changed from year to year until it got down to one in forty-eight. So far as I know, those changes which were made in the body of the Restrictive Rules are set out in Emory's *History of the Discipline*, under the head of "Of the General and Annual Conferences." Emory's *History of the Discipline* is not a commentary. He simply called attention to what was adopted first, and then what changes were made, and what those changes were; and I have always taken occasion to check Emory's statements by the *Discipline* because I found out he could make mistakes as well as the rest of us. He has no comments. This was not Bishop Emory, but Robert Emory, his son. [Here the witness was handed an excerpt from Emory's *History of the Discipline* covering the portion "Of the General and Annual Conferences."] I notice you photostated my copy of Emory's *History of the Discipline*, and there are corrections that I made on that copy from time to time, as I had occasion to study it, which are also contained in the photostat, and, so far as I know, with those corrections, this is accurate, showing the changes that were made in this particular subject matter from 1808 down to the organization of the Southern church. The corrections made on the excerpt were made from the *Journals* and the *Discipline*. The words "and are in full connection at the time of holding the conference," were added by me from the *Journal* of 1800. That was omitted by Emory, but was found in the *Journal* or the *Discipline*, or both.

Now there was a very important change of the Restrictive Rules between 1808-32. The great question—the continual question under discussion—had been the right of the bishops to make the appointment of the preachers, and there was an effort made by James O'Kelly, a very strong man natively, who spent eleven years as presiding elder in the country just south of the James River here in Virginia. Well, what I mean by presiding elder is this: At first the presiding elders were ordained for the purpose of administering the sacrament, and that traveled as everything else traveled in connection with Methodism, preachers and bishops. Then it gradually developed until they were given certain supervisory functions over a certain number of preachers and charges that were called presiding elder districts, and they were called presiding elders. Generally they took the strongest men available

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to appoint as presiding elders. This wise old man Asbury worked that out. O'Kelly was a very efficient presiding elder. He was not only a dominant man, he was a domineering man, and he stated that there ought to be given to the preachers some voice in their own appointment. The preachers themselves, after discussing that in 1793, said, "That won't do; that is going to prevent the enlargement of the work." And all the votes being in the preachers themselves and the bishops having no vote—there was no bishop except Asbury; frequently Coke was there, but he didn't amount to much when Asbury was there, in spite of the fact that he was Doctor of Civil Law of Oxford; wise, old, foxy Bishop Asbury, he controlled—that was voted down, and a group went off and organized the Republican Methodist Church. That question was debated for days. In 1808 one of the strongest men in the church, Ezekiel Cooper, took the ground that they ought to have a bishop for every conference, and that the Annual Conference ought to elect the presiding elder by ballot. And Joshua Soule—born and reared in Maine, one of the greatest men we ever had, then twenty-seven—he was able to overthrow Ezekiel Cooper at the end of several days' debate by a vote of seventy-three to fifty-two, and the General Conference determined that the bishop should make the appointments, including the appointments of the presiding elders. In 1812, those who wanted a voice in the appointments brought that up again, that is, at the next General Conference, as they did in 1816, and in 1820. By 1820 they had gathered quite a number of men. They were called soreheads by those who liked to give epithets; some of the best men in the church. They were able, on a compromise, to give the Annual Conferences a voice in the appointment of the presiding elders, by carrying through a resolution to that effect. Soule had been elected a bishop prior to the adoption of the resolution. William McKendree, one of the greatest men we ever had, was a bishop, born in Virginia, in King William County, went out West and had the whole Mississippi Valley. This marvelous man was sick; he had been a Revolutionary soldier. Bishop Asbury died in 1816, in Spotsylvania County. When William McKendree heard of the passage of the resolution, he came in, and being a strong, pronounced man, the first constitutional lawyer we had in our church, he announced to the conference that the resolution was unconstitutional, and he was not going to enforce it. This was the act of the General Conference concerning the election of the presiding elders by the Annual Conferences, and is known in Methodist history as the "Suspended Resolution." Bishop McKendree said he would take it to the Annual Conferences and have them to vote on it, then he would carry it out. But if they didn't, he wouldn't. When Bishop Soule was

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elected a bishop he said he would not be ordained because that act was unconstitutional; that he could not and would not enforce it, and he declined to be ordained. The matter was taken to the Annual Conferences. There were thirteen Annual Conferences. The seven Southern conferences said it was unconstitutional. The six Northern conferences said, "Why, the Annual Conferences don't need to vote on it. The General Conference passed it; they had a right to pass it, and we won't vote on it." Then in 1824, four years after, they suspended those resolutions and elected Soule a bishop, and he accepted. [The witness was here asked by Judge Park why the resolution was unconstitutional.] Right in the midst of the adoption of the Restrictive Rules they stopped the consideration of the Restrictive Rules to determine who made the appointments—the General Conference in 1808—and passed the resolution that the bishops should make the appointments. Then they went back and continued the discussion on the Restrictive Rules, and it was the editor who failed to put it in the chapter on the General Conference. Paine, in his *Life of Bishop McKendree*, quoting McKendree's papers, shows that the plan of the itinerant, general superintendency came under the Restrictive Rules, which plan included appointments. The agitation continued, and finally when the General Conference of 1828 refused to pass a memorial prepared by these men, [those favoring the resolution] organized societies in 1830, and organized the Methodist Protestant Church. Those men favored lay representation in all the conferences, and had become anti-presiding elder and antiepiscopal. Now the records of both the courts and history show that there were one or two divisions in the twenties in the Methodist Episcopal Church in America, the old church—one in 1824, and one in 1828. The War of 1812 had, of course, made some feeling. We had fighting on the border in Canada. Asbury and the pressing Methodist preachers had crossed the border: That didn't mean anything to them; people were sinners up in Canada as well as in New York and the South. They went after them, and the Methodist Episcopal Church in America—as the name really was, though dropped "in America" after a while—had Annual Conferences up there—Upper and Lower Canada, as they were known—and that feeling of patriotism got so strong that the Canadians asked that they be set off separately, and first one and then the other of these conferences was set off by vote of the General Conference, one of them in 1824, and the other in 1828. This was not submitted to the Annual Conferences. It was a division by action of the General Conference at the request of the people and preachers of Canada.

During this time questions arose concerning slavery, and the General

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Conference adopted measures of a compromise nature, under the influence of Dr. Coke, which met the conditions which existed. Dr. Coke was a rampant abolitionist, but he bought a slave in the West Indies and he got the General Conference of 1784 to pass a resolution that all the members of the Methodist Church should set free their slaves. Asbury made out a round for Coke, and instead of making it out in the North, he made it out in the South, and sent him down into Virginia and the Carolinas, and they came near mobbing him down there, and they had to suspend that—the people wouldn't stand for it. The solution for all of this was what they called a compromise, first adopted in 1816, completed in 1840, and frequently referred to in the debates of 1844. Each Annual Conference was allowed to determine the question of slavery for its members and people. They passed a more positive act, that in states in which the liberated slaves could not enjoy his freedom, it should not be a reflection on either preacher or any official of the Methodist Church to own slaves. The consequence was that the first man we had in South Carolina, who next to John C. Calhoun, had the greatest influence in South Carolina—William Capers—he owned slaves. He was elected bishop at the first General Conference of the Methodist Episcopal Church, South, held in Petersburg. This covers the high lights in the history of the church to 1844, with the exception of the amendment of the Restrictive Rules in 1828.

Concerning the question that arose in 1844—the Baltimore Annual Conference covered all the northern part of Virginia, all the valley down to New River, what is now West Virginia, Pennsylvania up through Chambersburg and Gettysburg, and around through the eastern shore of Maryland—the whole of Maryland—and, I think, Delaware. It had slave territory and free territory. Now they were faced with this question of itinerancy—the Baltimore Annual Conference—of putting a man who had been working in Virginia up in Pennsylvania, or one who had been working in Pennsylvania down in Virginia. So, for their guidance, that conference gave more consideration to the question than any other, concluded that they would not ordain any man to the ministry who owned slaves. So that in 1840, because they would not ordain some men in the northern neck of Virginia, that is, that portion north of the Rappahannock River and in the eastern counties—four counties, an old section and almost wholly Methodist at that time—they had to be transferred to the Virginia Conference, though they left Fredericksburg on the south bank of Rappahannock in the Baltimore Conference, and they had to travel through one conference to reach a part of the other conference, in order to settle that question.

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But a man by the name of Francis Harden married a Maryland lady who owned slaves. So far as he could, he made the slaves over to her, but Maryland law did not allow upon the emancipation of a slave for the slave to live in Maryland. The Baltimore Conference took that up. They said, "Why, you have broken our understanding. We can't send you to Pennsylvania; you own slaves." So they proceeded to discipline him. Harden thought that was right hard and he appealed to the General Conference, which was the procedure then. John A. Collins, who was my uncle, defended the conference. Harden took an appeal and William A. Smith of Virginia defended Harden. The appeal was argued for days.

In the meantime, James Osgood Andrew, a native of South Carolina, who was at that time living in Augusta, married a woman who owned some slaves. He made them over to her as far as he could under the laws of Georgia. He had a boy left to him by some admirer. . . . Of course his case came right up, and an uncle of mine, who ran off the track, brought in a resolution that ultimately split the church, which he ought not to have done.² After the War Between the States, it came out that the delegates from the New England Conferences met in New York, where the General Conference was held, and determined that unless they did take action that would condemn slavery they should secede from the church. There was one New England bishop, Elijah Hedding, and they wanted to get at him, but he was at a meeting of the College of Bishops and they were trying to reach some compromise so as not to have the church divide, and he signed the paper of compromise, and the next morning when they did get at him, and told him what their purpose was, he asked that his name be stricken off that paper. So that the New England Annual Conferences were going to secede with Bishop Hedding as their bishop. That led to a grouping, and the majority of the delegates of the General Conference sustained the Baltimore Conference in disciplining Harden. They took up Bishop Andrew's case, and he explained all the facts in the case to them in a paper, which is included in the *Journal* of the General Conference of 1844. Reverdy Johnson represented the South in the case of *Bascom v. Lane*,³ over a division of the property belonging to the united church [the Methodist Episcopal Church, before the division], and told the court that no man alive could explain the meaning of that resolution, but the South always interpreted it as the unfrocking of Bishop Andrews. He was not to exercise any functions, not only as a bishop, but of a preacher, while his impediment, as they called it, existed. And

² See the chapter "Of the General Conference," in Emory's *History of the Discipline*.

³ Federal Case, 1089.

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he could not get rid of his impediment—that is his connection with slavery.

Up to that time there had been no question, so far as I know, concerning the constitution of the General Conference and its functions, except the matter of the "Suspended Resolution," but then the North went off and claimed that the General Conference was supreme as the executive, as the legislative, and as the judicial body, and that a bishop was only an officer of the church and could be dismissed by vote without trial or any charges. There was no provision in the Restrictive Rules guaranteeing to a bishop a trial as distinguished from a minister, but a bishop was a minister. They just overrode everything. They had the majority, and who can stop a majority? As a result, the Southern delegates filed a protest, calling attention to the unconstitutionality of that action, and that that action would make necessary a division of the church unless Methodism was to die in the South. That grew out not only of the belief of the preachers who were delegates at that conference, but the records show that those delegates were flooded with letters from all over the South, saying that if the South submitted to legislation of that kind, Methodism was gone in the South, and especially those people who were writing to the preachers from all over the South, that they were through with Methodism. The protest was presented by Henry B. Bascom, later elected a bishop. As a result of that protest, a "Committee of Nine," as it is called and known in the history, prepared a Plan of Separation which was introduced in the General Conference as a series of resolutions. The committee was instructed to reach a compromise, if possible; if not, to present some form of separation. Robert Paine, afterwards elected a bishop of the Methodist Episcopal Church, South, was chairman of that commission. Hamline, elected in 1844 as bishop, wrote the plan, as Bishop Paine observed in his great speech before the Louisville Convention. That plan consists of twelve sections, really of three parts. As first presented, it left the determination of the separation to the delegates from the South in the General Conference. On the motion of Bishop Paine, that was stricken out, and it was left to the Annual Conferences in the South. The day after the General Conference adjourned, the Southern delegates remained in New York and had a meeting. They came to the conclusion that since they were in the ministry for the sake of the people, and the people were not in the church for the sake of the preachers, that they had no right to act, morally at any rate, and possibly no right to act legally, unless the people wanted a separation. So on that day after the General Conference, they passed a resolution that this matter should be referred to the Annual Conferences, that votes be taken through every congrega-

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tion in the South, of the people, and that if the people called for a separation they would hold a convention in Louisville in 1845.

I have made it my business through the years, wherever I could, to get my hands on any of the old records from 1844 to 1845, to see about that vote. . . . There is an official report to the Louisville Convention, and also the first General Conference held in Petersburg in 1846, of that vote and the statement is—and the bishops endorse—that 95 per cent of the people voted for the separation. The particular action to which I refer is found in the third of the resolutions as follows:

These several Annual Conferences shall instruct their delegates to the proposed convention on the points on which action is contemplated, conforming their instructions, as far as possible to the opinions and wishes of the membership within their several conference bounds.

The Plan of Separation consisted of three sections. The first and most important matter contained in Section I and two other sections lower down—Resolution I left to the South whether there would be a division, and Resolutions II, IX, and X determined certain things that should be the result of a division. That is, each preacher, without any reproach, might decide to which side he should go. Those on the border to take a vote and determine which way they would go, North or South. All of the property in the conferences that went with the South was to go with the people. It belonged to the people; they had built it, contributed to it, and the Church had announced in 1796 that the General Conference laid no claim to ownership of property and never would, and that the property belonged to the people, and that action was taken by this all-powerful Conference of 1796 and never has been repealed to this day. There had been a desire for a change in the Sixth Restrictive Rule, which had reference to the use of the proceeds of the Publishing House and the Chartered Fund. It is difficult to get a whole connection to make a change, just as it was difficult before Mr. Bryan came along to get an amendment to the American Constitution. We have been making holes in it ever since. There was difficulty in getting any change in the Restrictive Rules, and so sections three to eight inclusive and eleven, of these twelve sections had reference to the change of that Restrictive Rule, which really had no connection with the matter involved, but as they said—both North and South made that statement—they just put it in there because this was a good opportunity to accomplish that too, and then the last section is a request to the bishops to lay the change of this Restrictive Rule before the Annual Conferences. The Plan of Separation consisted of the provision that separation should be determined by the Annual Conferences in the South, and then

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three resolutions of what should be the effect if separation took place; it also proposed an amendment to the Sixth Restrictive Rule, and what should follow if that Restrictive Rule should be amended in that fashion. William Winans and L. L. Hamline said that the amending of the Restrictive Rule was not a condition to the division of the property of the publishing house, but it has been so hard to make any changes in the matter of the produce of the publishing house that they proposed to change the rule so that two-thirds of the General Conference could distribute it. It was one of the contentions of the North that they did not carry out their part of the agreement to divide the fund because the Northern conferences did not vote on it. They gave as the reason for putting it in there, that is, the men of the conference of 1844, both sides, gave as a reason for the inclusion of the change of the Restrictive Rule, not that it was a condition of division, but it was a good time to make the change in the rule.

QUESTION: Would you pardon me if I go back to the question we had a while ago? In the Plan of Separation which I have here, beginning on page 127 of this history, the first resolution provides:

That, should the Annual Conferences in the slave-holding states find it necessary to unite in a distinct ecclesiastical connection, etc.,

and then provides for a majority vote of the members as to whether they will remain in the Methodist Episcopal Church or attach themselves to the Church, South. Now when we get down here the third resolution was:

Resolved, by the delegates of all the Annual Conferences in General Conference assembled, That we recommend to all the Annual Conferences at their first approaching sessions, to authorize a change of the Sixth Restrictive Rule, so that the first clause shall read thus: "They shall not appropriate the produce of the Book Concern, nor of the Chartered Fund, to any other purpose other than for the traveling supernumerary, superannuated and worn-out preachers, their wives, widows and children, and to such other purposes as may be determined upon by the vote of two-thirds of the members of the General Conference.

Now, the addition is

and to such other purposes as may be determined by the vote of two-thirds of the members of the General Conference.

ANSWER: Yes, sir. I thought I stated that.

QUESTION: That is correct, isn't it?

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ANSWER: Yes.

QUESTION: Then we get to the fourth:

That whenever the Annual Conferences, by a vote of three-fourths of all their members voting on the third resolution, shall have concurred in the recommendation to alter the Sixth Restrictive Article, the agents at New York and Cincinnati—

They are the publishing agents, I take it?

ANSWER: Yes.

QUESTION:

—shall, and they are hereby authorized and directed to deliver over to any authorized agent or appointee of the Church, South, should one be organized, all notes and book accounts against the ministers, church members, or citizens, within its boundaries, with authority to collect the same for the sole use of the Southern Church, and that said Agents so convey to the aforesaid agent or appointee of the South, all the real estate, and assign to him all the property, including presses, stock, and all right and interest connected with the printing establishments at Charleston, Richmond, and Nashville, which now belong to the Methodist Episcopal Church.

5. That when the Annual Conferences shall have approved the aforesaid change in the Sixth Restrictive Article, there shall be transferred to the above agent for the Southern Church so much of the capital and produce of the Methodist book concern as will, with the notes, book accounts, presses, etc., mentioned in the last resolution, bear the same proportion to the whole property of said concern that the travelling preachers in the Southern Church shall bear to all the travelling ministers of the Methodist Church; the division to be made on the basis of the number of travelling preachers in the forthcoming minutes.

6. That the above transfer shall be in the form of annual payments of \$25,000 per annum, and specifically in stock of the Book Concern, and in Southern notes and accounts due the establishment—

what looks like the very purpose of amending the restrictive rule was in order they might make that division.

ANSWER: It may look that way, but when you come to their own statements of what they had in mind you will find—and I will try to put fingers on the passage while you gentlemen are lunching.

In the next resolution they appointed a commission of Bangs, George Peck, and James B. Finley to act in concert with the same number of commissioners appointed by the Southern organization, to estimate the amount due the South. It may look as if this is part of the Plan of Separation but it did not look that way to the Supreme Court in *Smith v. Swormstedt*.⁴

⁴ 16 Howard (U.S.), 288.

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On page 137, at the bottom of the page, of the history appears this:

Some remarks were made and amendments suggested, which seemed to assume that the Annual Conferences must first vote to change the Sixth Restrictive Rule before the Plan of Separation could go into effect. To correct this impression, Dr. Winans gave the history of the matter to the committee.

He said:

It would be observed that there is only one provision in the whole report that went to the Annual Conferences; and that merely authorized, should occasion occur, the appropriation of the proceeds of the Book Concern otherwise than as now appropriated. They were not sending round to the Annual Conferences any proposition in which the action of the South in reference to the separation was concerned. The only proposition was that they might have liberty, if necessary, to organize a separate conference; and it was important that the South should know, at that early period, that they had such liberty in order to allay the intense excitement which prevailed in that portion of the work.

Mr. Hamline would state the views of the committee on the subject. They had carefully avoided presenting any resolution which would embrace the idea of separation or division. The article which was referred to the Annual Conferences had not necessarily any connection with division. It was thought, as complaints were abroad respecting the present mode of appropriating the proceeds of the book concern, it would be for the general good that the power to appropriate such proceeds should be put in the power of a two-thirds vote, instead of in the power of a mere majority, thus making it more difficult to make a wrong appropriation. And the occasion of this report was taken hold of by the committee to make it more difficult to misappropriate the funds, in which they believed they should serve both the particular object of the report and the general good of the Methodist Episcopal Church.

So far as I know, no leading man in the church ever doubted that the church had a constitution. I have heard it often discussed from my young life, long before I went into the ministry. The constitution is partly written and is partly unwritten—perhaps mostly unwritten. As to what the constitution consists of, you will find it in the *Discipline*, you will find it partly in the history, and, as I have understood the matter in my studies, a good deal of it is just analogous to the common law—just the outcome of customs prevailing among Methodists. All the the constitution of the General Conference is, of course, part of the constitution of the church, to be found in the *Discipline* of 1934, begin-

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ning on page 29, entitled "Of the General Conference," except that there are one or two sections in there, I think, by oversight, which were never submitted to the Annual Conferences and therefore they would not be called constitutional. I cannot offhand point them out in the *Discipline* of 1934. I called attention to them in a report prepared for the bishops and submitted to the General Conference of 1914. I think paragraph thirty-seven is one of them.

The Bishops or a majority of the Annual Conferences shall have the authority to call a General Conference at any time if they judge it necessary.

I don't think that was ever passed on by the Annual Conferences, but I am not certain that is one. I do recall, certainly, that there is at least one, and probably more than one, of the sections that have not been constitutionally adopted. In addition to those portions of the chapter "Of the General Conference," which were adopted in 1808, and those subsequently adopted by the General and Annual Conferences action, there are sections of the *Discipline* which are a part of the constitution of the church.

QUESTION: What sections are those and how did they become parts of the constitution?

ANSWER: Well, as I mentioned this morning, the question was up again who shall have power to appoint the preachers to the work. That was constitutionally settled in 1808. It turned aside from the discussion of the Restrictive Rules on the motion of Ezekiel Cooper, and took up that question and passed on it, and I remember distinctly that the vote was 73 to 52 in favor of that. That is part of the constitution.

There is a chapter in the *Discipline* of 1934 on the Judicial Council, which was adopted by the General Conference of 1930, and it subsequently received the approval of three fourths of the members of the Annual Conferences. I believe that every provision that was adopted by a vote of three fourths of all the members of the several Annual Conferences present and voting and by two thirds of the General Conference succeeding, is a part of the constitution. However, there is the requirement that in the case of the alteration of any Article of Religion that that requires the affirmative vote of every Annual Conference. The proviso originally affected the Restrictive Rules, and said any of which can be altered on the vote of every Annual Conference, provided two thirds of the succeeding General Conference shall agree. Now instead of changing a Restrictive Rule, the church has, so far as I know, by unanimous consent gone directly at the change and let the rule alone. For instance, in 1866, when the lay delegation was admitted into the conferences, general and annual, the General Conference did not pro-

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ceed to alter the Restrictive Rule so as to make it possible for the General Conference to make the change as the proviso would seem to indicate, but they submitted to the Annual Conferences direct the question, "Shall we admit laymen to the General Conference?" And that was passed affirmatively. The General Conference had already given a two-thirds vote in 1866, and it became a part of the constitution. But when you come to a strict construction of that proviso, all that proviso says is you could change your Restrictive Rules. Now that has been the universal procedure. We have knowledge of it in the United States Constitution, you know—procedures that go on. Another example of this same thing is the recent action in connection with the language by which a presiding elder might hold an appointment. The Conference of 1934 passed a resolution that no man should keep the position of presiding elder more than four years continuously. The General Conference appealed from that, or there was an appeal made. That was the first question taken up by the province of the General Conference alone to adopt that legislation. Now in that case they did not go to work to change the Restrictive Rule. They went at once and introduced that into the constitution—that is, the matter, as the result of that decision, the matter was referred to the Annual Conferences and passed by them by the requisite vote. The Judicial Council held that the resolution was unconstitutional because it changed the plan of episcopal supervision. I believe that thoroughly. I thought it violated the constitution, in fact, that it took away from the bishops the power to make some appointments, which were a part of the constitution. In other words, the church has had a statutory procedure for amending the Restrictive Rules, and by common consent that statutory procedure for amending the Restrictive Rules has been adopted as the procedure for amending other parts of the constitution, if you want to call the proviso at the end of the Restrictive Rules statutory, but I think that is part of the constitution. I have never heard that question raised. I think it is common constitutional law in the Methodist Church. The name of the church is part of the constitution; that has been decided twice—perhaps three times. It was decided in 1866 because they submitted to the Annual Conferences the question whether the name should be the Episcopal Methodist Church. The Annual Conferences did not agree. In 1898, that question came down again. Then it occurred again in 1910, when the bishops were the supreme judiciary of the church, and they decided that the name was part of the organic law.

There are a great number of other common law matters, such as amending the constitution, the name, and other matters of that kind.

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For instance, the prime purpose of the Methodist Church from the time when Wesley began was to go out and preach the gospel and get people converted, and organize them so as to enable them to build up their spiritual life. Now that is a glorious thing. That is what we began to do in this country and that is what we did until the devil got hold of us. We went out and organized. Men preached under trees, a man did it down in South Carolina, and a lot of people professed to be converted. He organized them into a congregation right there and appointed all the officers, and there is not a word on that in the *Discipline*—never has been, so far as I know, and we do it today. I appointed more than one out in Oklahoma to a site that has been agreed upon to build a town. There wasn't a solitary thing up there except the prairie when I made the appointment, and that has been the great work of the Methodist Church. I think that is a part of the constitution. I don't think the constitution is to be determined by the size of the vote that must be taken in order to change it. I never have believed that, and I am on record years and years ago in calling attention to that very thing, that is, not the size of the vote that is called upon to enact a provision, constitutional or otherwise, and that makes it constitutional, but it is the nature of the case and the function to be effected. I believe it is a constitutional right of a minister to go into a new area and of his own accord organize a group of people into a church and to take them into full connection, although there is no written constitutional law to that effect. William Capers, before he was elected a bishop went down to a valley that was called Hell-something, near Macon, Georgia, and went over there and preached one sermon in that valley and it revolutionized the whole of that valley. It is the duty of a preacher to move into a new area, organize the people, and unite them with the church while he has that opportunity. Not only is it his right, it is his duty. I have done it myself over in Fairfax County, Virginia. It has been almost universally recognized that the chapter "Of the General Conference" is a part of the constitution. Bishop Merrill, of the Northern church, said that he thought that all the people who supposed that the constitution of the General Conference was confined to the Restrictive Rules has been translated. It has been generally recognized by the ablest men in our church that the written law which has been adopted by General and Annual Conference action is part of the constitution of the church. I do not know that it has been decided by the highest judicial tribunals of the church that these parts of the constitution which might be referred to as common law, was common law—they would say that it was constitutional matter. In the old church, so far as I know, there was not any agency set up to determine what was constitutional, and

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to pass upon any constitutional point. That is quite in harmony with Methodism; it provides as it grows.

QUESTION: In the old church, did they ever construct by custom any recognized arrangement for the determination of what the constitution was, or who was to be the final judge of that question?

ANSWER: No, except in the case of William McKendree carrying those suspended resolutions to the Annual Conferences, but that was to make a change.

McKendree and Soule took the position that they [the General Conference] did not have the power to pass those resolutions, and McKendree refused to enforce them, and they were repealed. McKendree made the point on the one hand and the conference on the other, and it died by virtue of the repeal of 1824.

In 1844 the Northern church took the position that the General Conference was an all-powerful body that could discipline a bishop or a minister as it saw fit, and the South took the position that they could not do this because the rights of the various officials were protected by the organic law of the church. Joshua Soule is on record as saying that he had never heard it whispered that the General Conference was the supreme legislative, executive, and judicial body of the church. After the organization of the Southern church we took no steps towards setting up and specifically authorizing anybody to become the final arbiter of what was constitutional matter until, in 1853, William A. Smith, the recognized leader of the Virginia Conference and president of Randolph-Macon College, raised the point that we had no means to determine legally what was constitutional, and he made a motion that the General Conference should enact that the bishops should have the power to veto what they regarded as unconstitutional. This motion was carried and put in the *Discipline* in 1854, and remained there until 1866. In 1866 the same William A. Smith raised the question and said, "I made a mistake. That ought to have gone to the Annual Conferences for their approval and it is not a part of the law of the church," and got the General Conference to repeal that provision. Then, I think in 1866, a commission was appointed which made a report which was overwhelmingly adopted, enacting the provision that remained in the *Discipline* about episcopal veto until it was repealed by the enactment of the provision of the Judicial Council, which was submitted to the Annual Conferences and was voted with only seven negative votes in the whole church.⁵ In 1870 the General Conference adopted legislation vesting this power in the bishops and that legislation was referred to the Annual Conferences, and having been approved by three

⁵ See the Bishops' Address to the General Conference of 1910.

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fourths of the members of the several Annual Conferences, present and voting, became adopted and is correctly set forth in the *Discipline* of 1874.⁶ It appears in the *Discipline* of 1874, because that was the first General Conference after its adoption by the constitutional process, although it was really adopted in 1871, because it went the rounds that year, and that is a little singular because ordinarily it is published in the next publication of the *Discipline*, but they kept it out in the interim until it came back to the General Conference. That legislation gave the bishops the power to check legislation. That is all they could do. In other words, the term was used judicially in their power to declare a thing unconstitutional, and not to enact a legislative veto.

When the General Conference has passed an act—speaking in the historical present—when the General Conference passed an act, the bishop presiding over it, one or the other of them, if they saw that the General Conference had passed it out of its province, they brought back to the General Conference what was popularly called a veto, the bishops raising the question on their own motion. There was no procedure enacted. It was quite customary for the General Conference itself to ask the bishops what was the law of the case and they did that repeatedly. Somebody on the floor would offer a resolution whether such and such a law was valid, and the bishops always answered.⁷ There never was any written provision for handing down anything the bishops said was unconstitutional. The process was that the bishops announced to the General Conference that the matter referred to was unconstitutional, giving their reasons in writing. That ended it, unless the General Conference itself took the matter up and referred it to the Annual Conferences. If the matter was constitutional the bishops did nothing about it.

Always from 1812, when William McKendree read a message to the General Conference, from that date to the present, it has been customary for the bishops to address the General Conference. That is known as the "Episcopal Address," and that was an address that covered the matters they thought should be covered, and any matter of law that needed to be changed or embraced was included in the address. In the year 1918 the *Journal* of the General Conference shows that there were two acts of the General Conference which was declared unconstitutional. One related to the laity rights of women; that is, the right of women to hold official positions in the church. One related to a change in the Apostles' Creed. We checked both these legislations. Each of these matters was referred to the Annual Conferences.

⁶ See the 1874 *Discipline* of the Methodist Episcopal Church, South.

⁷ See pp. 44-45, *Journal* of 1926.

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The requisite approval was given to laity rights, but the change in the creed was defeated. It did not get a three-fourths vote, and I called attention to the fact that it had failed because it did not get a majority vote in the conferences. The bishops said:

The question submitted related to our "standards of doctrine," and our Constitution requires the concurrence of each Annual Conference with the General Conference to change any part of these standards.⁸

That is a judicial decision of the College of Bishops and was unanimous, every bishop in the church at that time signing the address, signing that statement. The bishops at that time were the supreme judicatory of the church as much as the Supreme Court of the United States is the supreme judicatory under the Constitution.⁹ After the conference adjourned at any particular session, the bishops had no power in the matter of the constitutionality of any legislation passed at that session—they had to present their objections in writing at the conference that passed the act. We could not sit as a constitutional court after the close of the conference on any constitutional matter. The only way to bring that up would be in the Episcopal Address at the next conference.

One way in which they could express themselves favorably to the constitutionality of an existing law was, for instance: In 1866, on the motion of Norvell Wilson—father of Bishop Wilson—and Eldridge Veach, one of the leaders of the Baltimore Conference, the bishops were asked to prepare a commentary on the constitution, so as to unify the administration of the law throughout the church, and the bishops, beginning in 1867 and extending up to the debacle in 1938, prepared the book called the *Manual of the Discipline*, and set out what they thought the law was, and what they proposed to enforce.¹⁰ The nineteenth edition of the *Manual of the Discipline* was prepared by me, and was unanimously approved by the College of Bishops, when they were the supreme judicatory of the church.

The manuscript of the *Manual of the Discipline* was referred to a committee of which Bishop Candler, Bishop McMurry, and Bishop Watkins and some other member whose name I cannot recall, and myself. The chairman appointed Bishop Candler, Bishop John M. Moore, Bishop McMurry, and Bishop Ainsworth to co-operate with Bishop Denny in a review and final determination of the contents and form of the new manual.¹¹ That was the official report of the meet-

⁸ See the Bishops' Address to the General Conference of 1922.

⁹ See the constitutional decision by the College of Bishops, *Journal* of 1894.

¹⁰ See chap. i, sec. 1-2.

¹¹ See report of the College of Bishops, the *Christian Advocate*, Nashville, May 15, 1931, p. 631.

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ing of the College of Bishops for that year, but that was not a legislative act. They were acting under authority of the action of 1866, of which I spoke, that they were to prepare this commentary on the *Discipline* so that there might be a uniform legislation. In addition, a later General Conference had required of the bishops that they should hold two meetings a year for the purpose of unifying their administration and the combination of the two—the order of 1866, and this action taken in 1910—to hold these meetings twice a year and agree upon some method of administration that might unify the work of the church, I think that might make it legislative by the General Conference. When the committee had gone over the manuscript and approved it unanimously, they reported it back to the College of Bishops, who then gave their unanimous approval of it. The committee had no legislative power and could not make any constitutional changes, but our work was more than editing. We commented on the law, and showed what the law was, just for instance, as my old teacher, John B. Minor—he wrote *Minor's Institutes*. Now, in the state of Virginia, what old John B., as he was affectionately called, put down in the *Institutes*, that is law in Virginia. At that time the bishops were the supreme judicatory of the church.¹² The General Conference of 1866 made provision, or initiated the legislation providing for lay representation in the General and Annual Conferences, which went to the Annual Conferences in the quadrennium 1866-70 and, being adopted by them, lay representation has been had since that time.

Wesley sent over in unbound sheets what he called a “Sunday Service” for the Methodists in America, which contained his revision of the Prayer Book of the Church of England. He reduced the thirty-nine Articles of Religion to twenty-four, taking out the Calvinistic articles, and then skimmed the cream from that marvelous ritual that Cranmer had supervised and written most of. The General Conference of 1784 added another on duties to the state and numbered it twenty-three; that made twenty-five articles. The resolution (1894) was signed by Bishop A. Coke Smith and me.¹³

You will find my statement in explanation of the changes made in the Articles of Religion in the *Daily Advocate*. Some of the members of the General Conference were so obtuse as to think that I, who had worked for years over the question of getting a correct text of our Articles of Religion, was trying to change the creed of the church, and

¹² See the *Journal* of 1910 of the constitution of the church; also the *Journal* of 1866, pp. 108-9, setting forth the action on lay representation.

¹³ See resolution, *Journal* of 1894, pp. 264-5; also p. 268; also the report on the Articles of Religion, *Journal* of 1898.

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it was to settle that question that I was requested to make a statement. There had arisen a question in the church as to the accuracy of the Articles of Religion as published in the *Discipline*. It was the purpose of the movers of the resolution found on pages thirty and thirty-one of the exhibit, to have the matter authoritatively inquired into, and to accurately settle the true text of the Articles of Religion. A very excellent gentleman, Dr Andrews of Mississippi, misunderstood the whole matter, and he got up with the *Discipline* of 1894 in one hand and in the other hand a printed report of this committee and called attention to the fact that in giving the true text of the Articles of Religion, as we found it, did not agree with what was published in the *Discipline* and, therefore, he jumped at the conclusion that the committee had gone to work and made changes in the Articles of Religion. There was, in fact, an error in the text of the articles as published. Nobody seems to have paid any attention to the text of the Articles of Religion from 1808 until I took it up in my early days in the ministry. It seemed important enough to be inquired into. In the report to the General Conference of 1898, I called attention to a footnote added to Article XXIII by the General Conference action in 1820, and to an amendment to that footnote by General Conference action in 1854, and I stated that the footnote of 1854 was not a part of the Articles of Religion because enacted by General Conference alone, that is, without reference to the Annual Conferences, and for that reason does not form part of the Articles of Religion. As a matter of fact, the Canadians interpreted the Article as swearing allegiance to the United States government, and they didn't want to swear allegiance to the United States government.

The footnote was adopted in 1820 because the Canadian Methodists, those connected with the American Methodists, were twitted and charged with swearing allegiance to the United States of America, and they brought that matter to the General Conference of 1820, and the said General Conference, in order to quiet any thought of that kind, or any accusation of that kind, adopted that footnote. Since 1898 there has been an amendment of the Articles of Religion of the Southern church, so far as foreign conferences are concerned, in an amendment finally adopted in 1922.¹⁴

The Twenty-third Article of Religion—the alternative Twenty-third Article of Religion as finally adopted in 1922—is as much of an Article of Religion as the old Twenty-third article which was retained for this country, but it is only applicable to conferences in foreign lands. In other words, we have two Twenty-third articles,

¹⁴ *Discipline* of 1934, p. 29.

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one for Americans and one for non-Americans, each being an Article of religion for the church.¹⁵

There was not any proposal at the Conference of 1828 to establish any new or different procedure than that which had formerly existed for amending the first Restrictive Rule.¹⁶ The first proviso, as it appears on pages ten and eleven of the exhibit, is the exact language of the resolution introduced by Wilbur Fiske in 1828, and it was recommended by each of the Annual Conferences and the General Conference of 1832, by the requisite vote, amended the procedure for amending the Restrictive Rules in accordance with its recommendation made in 1828. The proviso, as published in the *Discipline* for 1832 to 1906, did not contain all the constitutional law of the church for amending the Restrictive Rules. It omitted the method by which you could change the first Restrictive Rule. The method after 1832 is the same that it had been since 1808, because the action of 1832 excepted the First Restrictive Rule.

Bishop McTyeire, Bishop Soule, Dr. Bascom, Bishop McKendree, Bishop Wilson, and Bishop William Capers were among the ablest legal minds, as was Bishop John J. Tigert, who, in the Southern church, has written the most comprehensive work on the constitution and constitutional history of the old church and of the Southern church, and it has been so highly esteemed that in the last *Discipline* published, even in The Methodist Church, the book is part of the course of study for preachers. His book is entitled *Constitutional History of American Episcopal Methodism*. Bishop Tigert, both in the main portion of his work and in the appendix, takes the position that the action of the Annual Conferences from 1828 to 1832, and of the General Conference of 1832, made no change whatsoever in the procedure for amending the first Restrictive Rule, but that the procedure still remains as provided in 1808. That matter came before the General Conference in 1906.¹⁷

About 1906 nationalism began to prevail throughout the world in different nations. We had work in Japan, in Korea, in China, in Mexico, and in Brazil. The delegates from these countries came to the General Conference and some of them brought up the question of the Twenty-third Article and said they were compelled to swear allegiance to the United States government, and that it impeded the

¹⁵ See pp. 44-48, *Journal* of 1828, relating to the amendment of the Proviso of 1808. These pages set forth a resolution offered by Wilbur Fisk for the amendment of the Proviso of 1808.

¹⁶ See the *Journal* of 1828, showing the request of the General Conference that the Annual Conferences recommend the amendment proposed by Fisk,

¹⁷ See the *Journal* of 1906.

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work in their church. They brought petitions for a change of Article XXIII. They were referred to the proper committees, they paying no attention to the constitutional side of it, and reporting in favor of changing the article, when the General Conference had no power to change the article. The moment that report was brought up Bishop Tigert, being the secretary of the General Conference, later elected a bishop by that Conference, called attention to the constitutional question, and a committee was appointed, consisting of J. J. Tigert, J. L. Kennedy, who was from Brazil, S. H. Wainwright, who was from Japan, George M. Napier, Attorney General of Georgia, and myself. We were appointed as a special committee to consider the matter. Before going into the meeting of the committee, which was appointed by Bishop Tigert, whose name was first, I knew we were going to have—or thought we were going to have—some difficulty about that, because there were some people who, through years, maintained what to me was utter nonsense; that we could not by any process change an Article of Religion, that having once adopted it we were bound by it throughout all eternity, which looked to me as if it were bad, not even good nonsense, and I had made a study of the matter as closely as I could, and had long since come to the conclusion that, in view of the fact that the Fiske resolution said, "Excepting the First Article," in view of the fact that his revision was called an amendment, in view of the fact that nothing had been done to affect the first article or the original plan for changing it, and therefore the only conclusion that could be logically reached was that the original plan still applied to the first article. So I wrote out my views in such time as I had and, knowing the respect of the whole church—confidence of the whole church in Bishop Wilson and his great ability, his knowledge of our law, and having talked the matter over with him, I went to him and asked him to sign it. That is a photostat copy of my statement even including the words inserted.¹⁸ Bishop Wilson and I read it over and he said to me, "You know that is perfectly good law," and I said "Well, we are going to have a fight." That [pointing] is Bishop Wilson's signature and he signed it in my presence with the understanding on his part because he felt a little shrinking from the growing increase of confidence of the church in his legal ability, and he said he did not propose to do anything to set himself up as the legal authority in the church. [He] said, "I will sign this, Collins, with the understanding that you are not to use it unless you get

¹⁸ At this point a photostatic copy of the statement written by Bishop Denny, and shown to Bishop Wilson, was introduced.

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some other bishop to sign it." So when I went out of his room the first bishop I met happened to be Bishop Hendrix and I explained the matter to him and read the paper to him and showed him Bishop Wilson's signature, with which he was perfectly familiar, and he signed it and I took it to the meeting of the committee. We did not have such a very long meeting, and we adopted that as the report.

Bishop Tigert afterwards came to me and said, "Now do you object if I put this in my handwriting?" I told him, not at all; otherwise I as secretary would have filed that. Well, instead of copying what had been adopted, he copied from his book, and I called his attention to that, then he said, "That does not change the meaning at all," and I agreed to that. It did not make any difference to me whose handwriting it was in; good law is good law whoever gives it, whether Lord Mansfield or some pettifogger. So it was adopted by the General Conference without one negative vote.

After the adoption of that report, as the record shows, it was reconsidered on the motion of a man from Kentucky by the name of W. E. Arnold, who said he thought it better not to have two Articles of Religion, one for home and one for foreign use, and he wanted to have the whole article stricken and this new article put in. This was discussed and turned down with only seven votes in its favor, and the report of the committee was adopted overwhelmingly. Following the law of 1808, the alternative Twenty-third Article proposed could not be constitutionally adopted unless it should first be recommended to the General Conference by all the Annual Conferences, and approved by two thirds of the General Conference succeeding. That was following the law of 1808. If, in the opinion of the bishops, who were then the highest judicatory of the church, that report and that action of the General Conference was erroneous and it called for a procedure not required by law, it would undoubtedly have been the duty of the bishops to arrest that action. They did not do so.¹⁹ These pages refer to the request made by the General Conference to the Annual Conferences to take action on this matter of changing the Twenty-third Article of Religion. In 1910 the bishops reported to the General Conference that there were certain matters relating to the action on the Articles of Religion that needed to be considered, that it turned out that two little conferences in the West—Montana and East Columbia Conferences—had failed through oversight of the bishop to vote on this Twenty-third Article. That being the case, the whole thing had failed because it required the affirmation of every Annual

¹⁹ See the *Journal* of 1910.

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Conference, and that was the matter which Bishop Chandler presented to the General Conference, and which led to the report of this committee asking that the article be transmitted to the College of Bishops, and that they be instructed to take a vote in the East Columbia and the Montana Conferences. In the quadrennium from 1906 to 1910 every conference had acted on this matter affirmatively except those two little conferences, which had not voted at all. The General Conference then adopted the resolution, instructed the bishops to cause it to be submitted to those Annual Conferences, with the request that they should recommend it to the next General Conference. Bishop Candler made a report to the College of Bishops, but that report is not set out in the *Journal*. I have no idea where the actual copy is, unless it is on file in Nashville.²⁰

At the 1914 General Conference the bishops made a report of the vote in the Montana and East Columbia Conferences and that completed the affirmative vote of every annual conference, and then said it belonged to that General Conference, as the following General Conference to complete the action by a two-thirds vote. That General Conference did not complete the action. The committee voted to complete it and passed a resolution and put it in the hands of the secretary, who forgot to bring it up before the Conference, so the General Conference of 1914 adjourned without completing the process of adopting this alternative Twenty-third Article. I quote from the Bishops' Address, as follows:

In our Address to the General Conference of 1914 attention was called to the fact that all the Annual Conferences had voted in favor of a substitute for the twenty-third article of faith in the Disciplines of all our Churches in foreign lands. To complete the legal steps, it is necessary that the General Conference of 1914 should by a majority of two-thirds concur in the action of the Annual Conferences. Unfortunately, most probably by oversight, the General Conference took no action in the matter.

Inasmuch as our brethren in foreign parts have published the proposed amendment in the Disciplines used in those countries and also because of the importance of the question, we recommend that this General Conference, a majority of two-thirds agreeing, request all the Annual Conferences once more to vote on the amendment.²¹

In 1918 the Committee on Revisals submitted a report adopted by the General Conference unanimously, in which they again called for the submission of the question to the Annual Conferences in this

²⁰ See the Bishops' Address, *Journal* of 1914.

²¹ See the Bishops' Address, *Journal* of 1918.

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quadrennium, 1918-22. As much as they could make any decision, that was a judicial decision, that the recommendation of the Annual Conferences and the approval of two thirds of the General Conference succeeding was required to make any alteration of the Articles of Religion.²²

The following is an excerpt from the Bishops' Address: "Each of the several Annual Conferences has given a majority vote in favor of the proposed change . . . To complete this action it is necessary that this General Conference by a majority of two-thirds shall concur." That is a judicial decision of the bishops, that it required the recommendation of each Annual Conference and two thirds of the General Conference succeeding to alter an Article of Religion to affect any matter covered by the first Restrictive Rule. The bishops filed with the conference a detailed vote of the Annual Conferences showing the yeas and nays in each Annual Conference, ending with the statement,

Every Annual Conference having voted for this change, it remains for the General Conference to consider the matter. Should the General Conference by a vote of two-thirds concur with the Annual Conferences, the change will be authorized.

That is a legal finding by the College of Bishops in fulfillment of the responsibility laid on them by the church. One of the special committees appointed by the constitution was a committee on constitutional questions. One of the members was Bishop James E. Dickey, of Georgia; another was M. E. Lawson, chairman of the Judicial Council, who read the report to the General Conference of 1938, on the question of the validity of union, and who is now a member of the Judicial Council of The Methodist Church; others were Plato Durham, professor of Church History in Emory University; L. L. Clark, president of Kentucky Wesleyan College; J. W. Perry, of Holston Conference, one of the missionary secretaries of the church; Joseph E. Cockrell, of Texas, chairman of the Board of Trustees of Southern Methodist University; R. O. Randle of Louisiana; G. S. Hardy, of Winchester, Virginia; and J. G. McGowen, of the Supreme Court of Mississippi.

J. A. Anderson submitted a paper to the committee which he tried to withdraw, but withdrawal was refused. The paper was:

Whereas paragraph 43 of the *Discipline*, providing a method for altering the Restrictive Rules, contains the following words, "which may be altered

²² See the *Journal* of 1922.

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upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding"; and whereas these words appear in their present form for the first time in the *Discipline* of 1906, and are manifestly an unauthorized interpolation, apparently based upon a misinterpretation of the constitutional action taken in the year 1828; therefore be it

Resolved, That the editor of the next edition of the *Discipline* be instructed to delete from paragraph 43 the aforesaid words.

The action of the committee was that, "After carefully considering the above matter, your committee recommends nonconcurrence."

Before the report of the committee was reported to the conference, Mr. Anderson asked to withdraw the resolution, but the conference declined to consent and the report of the committee was adopted. I was present when the vote was taken and my recollection is that the vote was unanimous, and Mr. Anderson did not vote for his own motion. The committee was unanimous in its conclusion that the words belonged there, and in order to keep the matter clear the *Discipline* ought to continue to publish those words. The General Conference by a vote of 229 to 0 completed the action to amend the Twenty-third Article.²³

I had been asked to come before that committee on the constitution to state the facts in connection with the insertion of those words in the *Discipline* of 1906, having been on the committee at that time. Dr. Anderson of Arkansas was there and we argued, at the request of the committee, the legitimacy of those words. The committee, including Brother Lawson, was unanimous in its conclusion that the words belonged there. They were the law, and that in order to keep the matter clear, the *Discipline* ought to continue to publish those words.

All the original members of the Judicial Council shown in the *Discipline* of 1934 were members of the General Conference of 1922, except Weeks, Johnson, and Park. Bishop John M. Moore was a bishop in 1922 and signed the Episcopal Address of that year. He appeared before the Judicial Council and argued for those in favor of the adoption of the plan—that it was not necessary to have the recommendation of each Annual Conference to amend the Articles of Religion or the procedure by which they could be amended. The proviso read in the same manner in all the *Disciplines* from 1906 to 1934, when the provision concerning the bishops' veto went out. The new Twenty-third Article of Religion adopted by our church

²³ See the *Journal* of 1906; the *Daily Christian Advocate*; the *Christian Advocate*, Nashville; the *Discipline*; and Emory's *History of the Discipline*.

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is not one historically held in common by the three churches. Neither the Northern nor the Protestant Church ever had it. It is not historic.

In 1934 the Rules of Order contained a rule that all papers which proposed a change of the Restrictive Rules should state the alteration to be made and that the form of the motion should be, "Will the General Conference recommend to the Annual Conferences the change indicated above?" and Rule 18(c) provides that the rules may be suspended only on a vote of two thirds. I see there where they took the vote and they did not suspend the rules and they did not put the question in that form.²⁴

QUESTION: It is alleged in the bill that in the fall of 1937 various laymen in the church began to call meetings for the purpose of considering the Plan of Union then pending, and that in so far as the membership of the church expressed itself upon the question of that Plan of Union, and particularly in the state of South Carolina, the membership, that is, the ordinary membership, expressed itself against that Plan of Union. In connection with that allegation, I refer in part to page ninety-four of the exhibit, which is an excerpt from the *Daily Christian Advocate* of the General Conference of 1938, setting forth some data on that subject matter, and I will ask you what you know of the accuracy of that allegation?

ANSWER: I heard that allegation or read it. I heard the memorials as they came in. They were read by caption—not fully—and referred to the committee. To the measure of my knowledge, founded on what came under my observation there, founded also on my experience in visitations to a large number of places in the church and making addresses before Methodists, founded on the enormous increase of my mail, that is an accurate statement.

I made addresses in Columbia, South Carolina; in Florence, South Carolina; Savannah, Georgia; in Augusta; in Macon; in Atlanta; in Nashville; in Memphis; in Birmingham, and in Lynchburg, Virginia. In every one of these meetings memorials or resolutions were adopted. They varied in number. In every one of these meetings, after having discussed the question and giving my views upon it—my objections to it—I took a standing vote, and in all these meetings there wasn't as many as thirty people who voted in favor of this plan. The rest of them voted against it.

I attended two joint discussions of the matter here in Richmond, one in Byrd Park with a small attendance at a night service. They voted in favor of the plan. In my opinion, I am satisfied from long study of the question, that in addition to approval by the Annual Confer-

²⁴ See the *Journal* of 1938, p. 15, showing the adoption of the same rules of order as in 1934.

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ences and by the General Conference, that morally the voice of the people—vote of the people, consent of the people—was undoubtedly necessary, and I think also that legally the vote of the people was necessary to carry this plan.

When the church was organized in 1784, just a group of Methodist preachers got together and they said, "We are going to preach the gospel; get as many people converted as we can," and they had less than fifteen thousand people in the country, and it was altogether the work of the preachers. But in 1844, when this division took place, here were the leading men in the church—those sent to the General Conference and recognized as the leading men in the church—when the matter was left to them they said, "No, they did not believe that to be best." They did not give a reason. On the motion of the South, Bishop Paine being the leader, they referred that to the Annual Conferences, which consisted alone at that time of preachers. They met on the day subsequent to the adjournment of the General Conference, and they came to the conclusion that they could not go forward without the people. Now, I think that showed very clearly—it is only a conclusion from my lifelong study of the question—that showed very clearly this church belongs to the people, and we haven't any right by our action to flaunt them around just as if they were our property. There is no question in my mind about that. Why, they have been trying to keep my name on the list of bishops up there. They can't vote my membership as they please; membership is voluntary.²⁵

There are largely divergent views and differences of opinion on what is to be the constitution of the new church. Bishop Hughes said the constitution did not cover the point of separate jurisdiction.²⁶

The College of Bishops had before it, when it was the supreme judicatory of the church, the matter of the type of question which had to be submitted to the Annual Conferences in joining with the General Conference in reference to effecting a constitutional change. It was there when I got in. This question was had in connection with the legislation concerning the Judicial Council in 1930 and 1931. The invariable practice was for the bishops to frame the question and take it to the several Annual Conferences. In 1930 somebody in the publishing house framed the question without saying a word to the bishops, and he submitted a text that differed in a number of small particulars from the text adopted by the General Conference. That passed around

²⁵ See the article by Bishop Ainsworth, the *Christian Advocate*, 1928.

²⁶ See article, "The Plan of Methodist Union—An Interpretation," by Bishop John M. Moore, *Baltimore Southern Methodist*, June 3, 1937; also the *Daily Christian Advocate* of the Methodist Episcopal Church, 1936.

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through a number of Annual Conferences until attention was called to it—to the fact that it was not the text the General Conference had adopted, and that vote was canceled in those conferences. A committee of the College of Bishops was appointed to frame the question, and very carefully we went over the official record of the General Conference—the manuscript record—and planned that question and submitted it again to the Annual Conferences, because it was perfectly evident that if the General Conference voted on one text and the Annual Conferences voted on another text, there had been no concurrent action. In my opinion, our church cannot change the procedure for amending the Articles of Religion unless it be changed by the joint recommendation of each Annual Conference and two thirds of the General Conference succeeding. It would be absurd to suppose that a General Conference, being under limitations, could in the first place rescind the method of procedure, for then they could do anything they pleased with the limitations. Undoubtedly it takes the same vote to change the procedure as is required to change the substance of the articles. The church has common law matter standing on the same basis as the ordinary actions of the General Conference, even though it is not defined. There is a vast body of Methodist law that is binding and has been followed, that is not written. For instance, here is William McKendree who, while he knew the western section of the church when he was elected a bishop, he did not know the eastern section, and he had to visit all the conferences, and he did not feel qualified to make the appointments of the preachers without more information than he possessed. So he called what came to be designated a cabinet; that is, a meeting of the presiding elders, and consulted them. That went on as a custom of the church from 1808 to 1910, and never a word in the *Discipline* about a cabinet, but then Bishop Morrison appointed one man to three charges and left three charges without any man. So the General Conference said the bishop must read to the cabinet—didn't define the cabinet—must read to the cabinet the appointments before he announced them, to avoid oversights.

The great point in Methodism is that we did not wait for the people to hunt us; we went out and hunted for the people and found them, and Theodore Roosevelt was right when he said that the Methodist circuit riders saved the Mississippi Valley from barbarism. I refer to the organization of new congregations, but up to this time I do not know of any written law for the withdrawal of anybody—any member—from the Methodist Church. There is no written law about a minister withdrawing. Sometimes a preacher goes away and the people want services and there is no provision made for supplying that pulpit—no

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written law. But sometimes an individual—I have known an individual to be so highly esteemed that he could take the pulpit himself, layman as he was. Ben Hill's father was a local Methodist preacher. It has been the custom in the absence of the minister for the laymen of the congregation to arrange for the supply of the preacher.

The stewards—the laymen—who have charge of the business affairs of the church, are elected on the nomination of the pastor by the Quarterly Conference. By Methodist common law, the man who preaches to a new congregation appoints stewards, and they become the Quarterly Conference for that charge. There is nothing in the written law about it. In the Methodist Church there is the church conference, whose duties are not very well defined, but they can take up matters pertinent to the ongoing of the church; the Quarterly Conference, made up of the officials of the church; the District Conference, composed of all the preachers in the district and a number of laymen from each charge; the Annual Conference, and the General Conference.

In 1796 the General Conference took action declaring that the property of the preaching house did not belong to the General Conference of the church.²⁷ That action taken by the General Conference that had all the power, has never been repealed. A statement much to the same effect appears in the *Discipline* of 1798 under the title "Notes." It was a commentary in the *Discipline*.

CROSS-EXAMINATION.

I was present at the General Conference of 1938. I joined with the other bishops in requesting the Judicial Council to pass on the legality of the Plan of Union.²⁸

The Judicial Council announced that they would have a public hearing on the appeal of the bishops and on the "Statement of Points Relied Upon." I appeared before the Judicial Council, and also Mr. Collins Denny, Jr. The Judicial Council allowed two hours to each side for argument and stated that any person who desired to do so might file a brief. Judge Park and Judge Lawson were members of the council. Word had reached my son and me that one member of the Judicial Council had written a letter to J. M. Rowland, at Richmond, editor of the *Christian Advocate*, stating that the position taken by me and my son in some articles that we wrote was unsound. That word reached us

²⁷ Excerpt from the *Discipline* of 1797: "By which we manifest to the world that the property of the preaching houses will not be invested in the General Conference." See also advertisement in the *Discipline* of 1798; the chapter on churches and church property in the current *Discipline*; Emory's *History of the Discipline*.

²⁸ See *Journal* of 1938, p. 120.

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by virtue of the announcement by the presiding elder at the Richmond District Conference in 1937, that he had such a letter and that he would probably read it that afternoon. I had to go off to keep an engagement so I did not stay that afternoon. We quietly brought that matter to the attention of the Judicial Council. We said we did not know who was involved, but we wanted the Judicial Council to know that such a statement had been made and it ought to be looked into.

There was no objection made on the part of anybody opposed to unification to the composition of the court nor any objection to any of them acting as judges. We took for granted, of course, that if a man had made up his mind before the matter had been investigated, that he would do what any judge does—disqualify himself. Nobody disqualified himself.

The General Conference, working under the constitution of the General Conference, is the supreme legislative body of the church. It is a body limited by its own constitution. They cannot do anything they please, but we have no higher legislative body. It does not possess all the legislative power there is in the church under its constitution because we can change that by sending around to the Annual Conferences and that makes legislation as well as the General Conference. That is the way we made the Judicial Council. That is the way we amend the Constitution of the United States. The annual or other conferences of the church—the District Conferences, the Quarterly Conferences and the Church Conferences—have no legislative powers affecting the general church. The judicial power is vested in the bishops, not simply as a college, but also individually—to a considerable extent in the presiding elders and in the preachers in charge. They have executive functions in a descending scale.

After the adoption of the law creating the Judicial Council, it became the supreme judicial authority in the church.

After the separation of the two branches of Methodism, the term Southern Methodist church in common parlance means the same as the Methodist Episcopal Church, South. We call them the Northern church and the Southern church.

The legal title to the local churches is not in the General Conference nor in the unincorporated congregations that we call the Methodist Episcopal Church, South, because that is not a legal entity. Title is held by trustees for a certain use. That use is defined by the trust clause "for the use of the ministry and membership of the Methodist Episcopal Church, South," and that is the use it is held for if the trust clause is legal. I might say right here that I have had to take that question up when I was pastor in West Virginia because a man tried to take our

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property from us at what was called Blue [?] Sulphur Springs. They had no money. I had only been a preacher a short time. They brought the matter to me. I saw the judge who was the son of a Methodist preacher. He said he would recognize me as a lawyer. I went in there and called attention to what the law was, as I understood it, and fortified myself by writing to old John B.—I wrote a brief and he underwrote it and Adam Clark Snyder, president of the Supreme Court of West Virginia, he underwrote it. I brought the matter up before the Baltimore Conference in 1886 and called attention to the fact that the church, as a church, did not have any title, as a church is not a legal entity, and that report is on file in the minutes of the Baltimore Conference of 1886.

It is certainly a violation of Methodist law for a congregation to refuse to receive the minister appointed by the bishop under the authority of the General Conference.

There are two forms of the trust clause. The longer and the shorter form. The longer form is cut up into paragraphs and the shorter form is one part of the long form. Our older churches are held by the long form, and the most recent churches by the short form of deed. Coke is, by admission, the man responsible for the long form of deed in this country.

QUESTION: Do you know of any property that the General Conference owns or the church as a whole owns?

ANSWER: Yes, I do, because there is a Board of Trustees of the Methodist Episcopal Church, South—I think a Tennessee corporation—and they have some funds, the interest on which is to go to the superannuated preachers.

They are all owned by the corporation but that corporation is called the trustees [sic] of the Methodist Episcopal Church, South. Every member of the Methodist Episcopal Church, South, has a legal title to the name Methodist Episcopal Church, South, so long as he continues in it, but he can't take it with him when he leaves, and he divests himself of all interest in the church or of any of its property when he ceases to be a member. But I don't think anybody can put him out without his consent—unless they turn him out.

At the General Conference in Birmingham in 1938, I did not sign the report of the College of Bishops that the Plan of Union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church had been legally and constitutionally adopted. Bishop Candler and I did not sign it. He joined with me in my minority Episcopal Address. Bishop Candler was retired and was not present; he joined with me in my minority Episcopal Address.

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Bishop Ainsworth was retired and was not present. Bishop DuBose was retired, but was present and signed the report. So far as I know, I was the only bishop, active or superannuated, present who did not sign it, and I would not sign it now. I know that the General Conference, having before it the Episcopal Address in which it had been reported that the Plan of Union had been voted on by the Annual Conferences and the vote given, took up the question and had it debated in the General Conference and adopted it by the necessary two-thirds majority, and the statement of the bishops was that the total vote of the members of the several Annual Conferences was 8,897, of which 7,650 voted in the affirmative and 1,247 in the negative. But it does not show that the Mississippi Conference gave a majority against it, but it does show in the Episcopal Address. After that was passed by the General Conference, and after the bishops had reported as they did—that it had been adopted—provision was made for the appointment of delegates to the Uniting Conference. I think these delegates were appointed but I was not present and was not present at the Uniting Conference. I had nothing to do with it. I am a Southern Methodist. I know that the General Conference at Birmingham adopted a resolution, correcting what they regarded as an error in the *Discipline* which had been carried for years. A lot of men just turned somersaults there, bishops among them. They were fine hands at acrobatics, and they admit it. The General Conference passed the following resolution:

Resolved, That this General Conference in session in Birmingham, Ala., on the 5th day of May, 1938, does hereby order that the said clause be removed from the Discipline, and does hereby instruct and order the Book Editor to remove said clause from the 1938 Discipline, so that when such omission has been made, paragraph 43 will read . . .

That was similar to reconstruction in the South after the war. They reconstructed. They certainly did change paragraph forty-three. You could do indirectly what you could not do directly. That is fine law. The First Article of Religion certainly could be changed in accordance with the law as set forth by the unrestricted Conference of 1808. The Judicial Council had the last word, just as the Supreme Court of the United States had on gold, and I don't believe a word of it, but nevertheless the General Conference accepted it. They would accept anything. I do not have a high opinion of that General Conference. After the General Conference corrected the *Discipline*, it goes back to the form that was followed from 1832 to 1906. If a different provision for amending the rules were adopted, and it was done in the proper form and had the requisite vote, that would change that proviso. I am in

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favor of all the prosperity that can come to The Methodist Church. I will admit that I have fought any connection with it, but I am in favor of all the good that they can do—pray for them every day. The footnote adopted by the General Conference of 1820 and adopted with slight change in 1854, adopted for the Foreign Conferences, is identical with our articles, not with the Methodist Protestant. I am familiar with the Declaration of Union adopted by the delegates to the Uniting Conference. I am not familiar with anything done at the Uniting Conference except that they would not accept a paper from me. I sent them a paper and they sent it back, giving me instructions about what was the law. That part of the Declaration of Union which attempted to retain title to the names of the uniting churches is contradictory. I don't think they can take two names. I do not agree to that a minute. I marvel at their agility. They are The Methodist Church and also the Methodist Episcopal Church, South, and the Methodist Episcopal Church, and the Methodist Protestant Church. They have four names. You, gentlemen, belong to four churches. Yes, I testified and introduced into the record an action of the General Conference or a ruling of the bishops when they exercised judicial power, stating that the retention of the name was necessary to retain whatever title to the property the church had because the property was recorded in that name. I signed a veto of the College of the Bishops in this form:

We, the Bishops of the Methodist Episcopal Church, South, reluctantly and very respectfully interpose our veto upon the action by which it was proposed to change the name of the church, upon the ground that the name is part of the organic law of the church.

An effort was made to change the name of the church in 1866 and again in 1882; and on both occasions the necessity for the constitutional process was recognized by the General Conference, and by that conference the matter was referred to the Annual Conferences for final determination.

We do not, therefore, feel at liberty to allow a matter of such great import, involving titles to property, and opening the way for extended litigation, to take effect without the sanction of the Annual Conferences.

I signed that, but I do not see how they can retain the name and give it up at the same time. Now, as I understand it, they have given it up because they are The Methodist Church. They have stricken out the word "Episcopal," they have stricken out "South," and the two names are not the same.

The letter I wrote to the Uniting Conference which was returned to me was the one in which I set forth one of the reasons why I could not, and would not, go into The Methodist Church. They insisted that

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whether I agreed with them or not they were going to publish me as one of the bishops of the new church. I wrote them back that my name belonged to me, that it did not belong to anybody to use as they pleased, and I made it evident that if they did not promise that they would not publish me as a bishop of [that] church I would get out an injunction on them. The organization gotten up a few years ago by John Mott called me out of bed one night and said they were going to sign my name to a thousand telegrams to be sent to preachers in the state of Virginia. I told them that there was such a thing as forgery and that it was a penitentiary offense.

RE-DIRECT EXAMINATION

The allegation in the bill is correct that when the Plan of Union of 1924 and 1925 was before the church for action it was very widely discussed, many articles written on it, public debates, actions of every type of church organization for a period of some eighteen months. I visited twenty-eight District Conferences and spoke against the plan every time, did all I could to defeat it and, by the grace of God, did defeat it. In 1925 some of the Annual Conferences voted by standing votes; some by ballot. The overwhelming vote of the laymen, so far as it was recorded, was against the plan that was presented to the church at that time. In the Virginia Conference 370 votes were cast—ayes 168; noes 202. The vote of the laymen was 19 in favor of it and 60 against it. In the Baltimore Conference the vote was 137 for the plan and 141 against it. The laymen voted 28 for it and 35 against it.

Only one bishop changed his position between 1925 and 1938—Bishop Ainsworth. He agreed with us in 1925; he was against us in the last. The plan of 1925 was different from the last, but essentially the merging of the churches was the same.

The letter I sent to the Uniting Conference stating that I would not become a bishop of the new church and stating one of my reasons, was presented by Bishop Darlington and it went to the Committee of Reference and was returned to me with the statement that the Uniting Conference was not the body to which it should be sent, but that it should be sent to the General Conference.

QUESTION [by Mr. Barnwell, the referee]: Now, what is the distinction between "station," "point," "circuit," and "mission"?

ANSWER: They are called charges. That is the generic term. A circuit may have any number of points in it; that is, any number of congregations, and the preacher in charge travels around through these points—preaching generally twice, frequently three times a day. There is a difference between a station and a point. A point is one preaching

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place on a circuit. Each of the churches in a circuit has a Church Conference, made up of the members of the church at that point. The preacher ordinarily calls the Church Conference and presides over it. In a circuit they have a Quarterly Conference, which is the official body of the whole circuit. The Quarterly Conference is made up of the stewards and other officials of the church—trustees, Sunday school superintendent. Next above the Quarterly Conference is the District Conference under the charge of the superintendent unless the bishop is present, in which case the superintendent steps aside. The district superintendent is the same as presiding elder. The District Conference is made up of all the preachers working in the district, the superintendents working there, all the local preachers and laymen elected by the local charges. Sometimes they are elected by the Quarterly Conferences and sometimes by the Church Conferences. The Annual Conference is made up of the preachers and the lay delegates elected by the District Conference. It is a complicated system, but it was a most efficient system.

VII

BRIEF OF THE TESTIMONY OF DISSIDENT MEMBERS OF THE PINE GROVE CHURCH ¹

[Sworn for the Defendants]

H. W. COLE

I LIVE AT TURBEVILLE; AM FIFTY-FIVE YEARS OLD, AND HAVE LIVED AT Turbeville all my life except about three years at the beginning. I am a member of the Methodist Episcopal Church, South, holding my membership through the Pine Grove Church at Turbeville, and have been a member for probably thirty-five or forty years. I am one of the trustees assigned by the Church Conference held April 1939, to whom the house of worship and the land on which it stands was conveyed. I was present at that conference. I was elected secretary of the Church Conference. I read from the minutes of that Church Conference:

Church Conference, April 23, 1939, 5:30 P.M. On the refusal of the preacher in charge to call a church conference, the stewards of Pine Grove M. E. Church, South, on ten days' public notice, called a church conference, for April 23, 1939, at 5:30 P.M. In the absence of the preacher in charge, W. L. Coker was elected chairman of the conference. After the roll call the usual procedure as laid down in the *Discipline* was followed. Under new business the attached resolution was introduced by Cecil Buddin. In order that the provisions of the resolution be clear to all, the chairman read the resolution the second time, making them clear to all. The chair called for discussion. There was no discussion. After being duly seconded a vote was taken on the resolution and the vote was 160 for and zero against. The meeting adjourned. [Signed] W. L. Coker, Chairman; H. W. Cole, Secretary.

Attached was a resolution as follows:

¹ The hearing of oral evidence began before the Hon. Nathaniel B. Barnwell, special referee, at Charleston, South Carolina, on June 27, 1940. On account of his unusual familiarity with Methodist polity and history, the Hon. Orville A. Park was selected by plaintiffs' counsel to lead in the examination. Upon his becoming ill before the hearing was completed, Mr. McElreath took his place. Colonel R. T. Jaynes, Mr. R. E. Babb and Mr. G. B. Currie assisted in the examination. Mr. Collins Denny, Jr., and Mr. C. T. Graydon represented the defendants.

The evidence is not printed in the usual order, the defendants' testimony being printed first, on account of the fact that Bishop Denny's testimony was first taken and first introduced, and because the plaintiffs having pleaded the decision of the Judicial Council, the real burden of proof was shifted to the defendants.

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Resolved, That it is the sense of this church conference, composed of the active membership of the Pine Grove Methodist Episcopal Church, South, at Turbeville-Olanta charge, Kingstree District, South Carolina Conference, duly assembled:

First, That the said Pine Grove Church shall not become a member of the proposed unified church, to be composed of all Methodist denominations, but shall continue to support and practice the traditions and teachings of the Methodist Episcopal Church, South;

Second, That the trustees of said Pine Grove Church, namely, A. N. Coker, M. J. Morris, E. N. Green, D. E. Turbeville and E. L. Green, or a majority of said trustees, are hereby authorized and directed to forthwith convey to H. W. Cole, F. B. Thomas and W. L. Coker, in trust, the said Pine Grove Church and grounds to be held by them in trust for the use and benefit of the present and future membership of said Pine Grove Church, located in the village of Turbeville, Clarendon County, South Carolina, as a place of divine worship.

Also attached to the minutes was the notice calling the Church Conference, the body of which was as follows:

Upon the failure of the preacher in charge to call a church conference when requested, the following stewards of the Pine Grove Church are herewith serving notice on the membership of said church that a church conference will be held in said Pine Grove Church on Sunday afternoon, April 23, 1939. [Signed] A. N. Coker, J. G. Cole, J. S. Plowden, C. E. Coker, T. H. Coker, R. S. Green, E. N. Green, M. J. Morris, W. L. Coker and Dr. C. E. Gamble.

These minutes set forth correctly the action taken at that Church Conference. This notice was posted in two or three different places, one on the door of the church and elsewhere, and it was posted ten days before the meeting. It was generally known in the community that the meeting was going to be held and heard people were talking about it. I and two other members signed a notice dated May 10, 1939, given to Rev. L. D. B. Williams, signed, H. W. Cole, W. L. Coker and F. B. Thomas, as trustees of this property, informing him of the action of that Church Conference, and that the three signers would assume control and direction of the church property, and forbidding him to use the church for any purpose as representative of the united church, or, as such representative, to trespass on the church property. I sent this notice to Mr. Williams.

The frame building on that property burned some time in 1923, and the building committee laid plans for the erection of another building. I was a member, and secretary of that committee and kept the records

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of the conferences that were held concerning the building that stands there now. I know all the people who made contributions for the purpose of erecting the present building. I know those persons who have remained loyal to the Methodist Episcopal Church, South, and those who have gone into The Methodist Church—the new church. Approximately 80 per cent of the total amount for the purpose of the present building was contributed by those who remained loyal to the Southern church, and 15 per cent by those who went with the united church. Throughout the years I have been a member of the church I have been a regular attendant. I knew the whole membership of the church. I guess we had two hundred active members on November 1, 1938. I have not had any occasion to look over what purported to be a roll of membership at that time. I think that there were about three hundred, or something more, of active and inactive members at that time. About 75 per cent of the members have remained loyal to the Southern church.

ON CROSS-EXAMINATION

I was one of the members of the Pine Grove Church who requested the pastor in charge to call a Church Conference. I do not remember that I gave him specific reason. I do not remember whether I told him to have the conference called to ascertain who favored or who did not favor unification. I just gave him the notice. It was sent to him. He did not tell me anything. We gave him ten days' notice before the conference. He had plenty of time to arrange for the conference. Yes, we had the understanding, and the Church Conference was called for that purpose of deeding away that property from the trustees who then held it to other trustees. I did not submit the question of deeding away the church property to the Quarterly Conference. I am not a member of the Quarterly Conference, so far as I know. I did not know that the local church property cannot be sold without the consent of the Quarterly Conference. I am not familiar with that part of the *Discipline*. Mr. Coker, I think, wrote the resolution. I did not write it. The notice was prepared before the Church Conference. No, I do not know that it was a form resolution that was sent by the Layman's Organization for the Preservation of the Southern Methodist Church. I did not get the consent of the pastor to get this deed alienating the title to the property. The Church Conference elected me a trustee. I was not nominated by the pastor. F. B. Thomas and W. L. Coker were elected by the Church Conference, and none of them were nominated by the pastor or elected by the Quarterly Conference. I am not familiar with the *Discipline* of the church.

The Pine Grove Church was not going out of use nor had it been

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abandoned nor was it proposed to move it to a new location. The purpose of making the new deed was that we did not intend to go into the unified church. I am not familiar with the trust clause that is used in the deeds to all church property. It was our purpose, exactly, so that if the Methodist Episcopal Church, South, should unite with the Methodist Episcopal Church and the Methodist Protestant Church, to divert the property from the unified church, now known as The Methodist Church. The church I now belong to is the Methodist Episcopal Church, South. It now has an Annual Conference which was organized June 7, 8, and 9 of last year. Yes, they have sent us a pastor—A. E. Smith—sent to us by the conference we organized last year. There never has been but one Methodist Episcopal Church, South, and I belong to it.

ON RE-DIRECT EXAMINATION

Mr. Smith was sent to us under the auspices of the South Carolina Conference that was organized in Columbia last January and which met in Turbeville in June. Mr. Collins Denny was a part of it. Mr. Denny was not present at the Church Conference held on April 23, 1939. Mr. Denny was present at part of the conference held at Turbeville. So far as I know, that is the first time he was ever in Turbeville. Mr. Denny did not take any part in the conference held in Turbeville in June, 1939. Neither myself nor W. L. Coker nor F. B. Thomas have ever been appointed as trustees to hold this property by the Court of Common Pleas of Clarendon County, or by any other court.

DR. C. E. GAMBLE

I am fifty-nine years old and have lived in Turbeville all my life. I am a member of the Pine Grove Methodist Episcopal Church, South, at Turbeville, which I joined approximately twenty years ago. I have known that church all my life. Some of my family connections have been for a number of years members of that church. The deed dated May 7, 1877, was made by W. J. Gamble, a great-uncle of mine. The W. D. Gamble who signed the affidavit attached to said deed was a son of his and a cousin of mine. The deed, to which I have made reference, conveys to certain trustees, naming them as trustees of the Methodist Episcopal Church, South, two acres of land in Clarendon County where the Pine Grove Church stands, and it is the property upon which the Pine Grove Church now stands. W. D. Gamble who made this last-mentioned deed is the same W. D. Gamble who made oath on the deed dated October 16, 1897.

I have been a member of the Board of Stewards of the Turbeville-Olanta Circuit, of which the Pine Grove Church is one of the churches,

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for at least fifteen years. I have been for a good many years chairman of the Board of Stewards. I was such chairman during the winter of the unification controversy, and I was a member of the Quarterly Conference of that circuit, and have been secretary of the Quarterly Conference. I was secretary in 1938. I cannot recall positively what other years. The presiding elder furnished a blank to be filled out by the secretary of the Quarterly Conference after the business is attended to, which is signed by the secretary and the presiding elder. This blank is on a loose sheet. The business of the Quarterly Conference is presided over by the presiding elder, who fills out these questions. After the minutes are recorded on these loose sheets they are sometimes read back to the Quarterly Conference for approval, but sometimes this is omitted, and I would sign the minutes without them being read. The permanent record is supposed to be preserved in the conference *Journal* in a permanent bound volume. I did not transfer the minutes from the loose sheets to the permanent bound volumes of the Quarterly Conference with which I was connected, and particularly the Fourth Quarterly Conference of 1938. I do not know who did. I do not have the minutes on the loose sheets of the Fourth Quarterly Conference of 1938, and I do not know where they are, nor whether they are in existence or not.

To the best of my knowledge, the book exhibited to me entitled *Quarterly Conference Records, Turbeville-Olanta Circuit, Methodist Episcopal Church, South, January 1, 1936 to . . .* is the permanent record. I do not know in whose handwriting these records were transcribed. That charge was composed of three churches and at the quarterly meetings the trustees were all elected—different ones designated for the different churches. Specific persons were designated as trustees to hold title to real estate and houses of worship of the Pine Grove-Olanta charge, taken from the Pine Grove and Olanta charges. One trustee was designated from each church; one person from each point was designated to hold the parsonage property. The trustees named at the Quarterly Conference of which we are speaking, to hold title to the house of worship and the two acres of real estate on which it is located, were M. J. Morris, E. N. Green, A. N. Coker, Dan E. Turbeville, and E. L. Green. Ed. and Ernest Green were trustees of the house of worship and D. Luther Green a trustee of the parsonage property. The following persons are recorded on the conference record as trustees of the church property, E. W. Rush, F. B. Thomas, T. B. Ham, E. H. Lewis, D. P. McClam, M. A. Floyd, and G. N. Parker. At the time this Quarterly Conference was held, none of those seven gentlemen were members of the Pine Grove congregation. They were either members

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of the St. John's or Olanta churches. Each of them was designated as a trustee of the property in the congregation of which he was a member. I cannot recall whether on the original loose-leaf minutes or the transcribed minutes in the permanent volume, it was customary to make a written note designating the property for which each trustee is designated, but they are designated at that time, and it is generally known that each one is a trustee of his respective church or the respective parsonage property. E. N. Green and Dan E. Turbeville had been trustees for a number of years; E. L. Green and A. L. Coker for a few years. D. L. Green had been a trustee of the parsonage property for a number of years. This had been a condition for a number of years and so generally known among the congregation of the church.

At this Quarterly Conference E. N. Green was elected recording steward; twenty-six persons were elected stewards for the ensuing year; twelve of those held their membership in the Pine Grove church. The names of L. D. Green, E. L. Green and Dan E. Turbeville are not to be found among those elected as stewards. C. E. Coker, W. L. Coker, A. N. Coker, M. L. Dennis, C. E. Gamble, E. N. Green, T. H. Coker, J. S. Plowden, M. E. Phillips, J. G. Cole, and M. J. Morris were elected as stewards. I was not present at the first Quarterly Conference for the years 1938-39. So far as I know, none of the stewards elected at the conference held in November, 1938, resigned as stewards prior to the institution of this suit.

A letter signed by the eleven gentlemen named there, was mailed to Bishop Purcell informing him that the members of the Board of Stewards of the Pine Grove Church would not go into the united church; that they were determined to keep alive the Methodist Episcopal Church, South, and would make their own arrangement for a pastor. I mailed this letter and sent it by registered mail and asked for a return receipt, which I received. I cannot recall positively if that letter was sent pursuant to any formal action at a meeting of those stewards with members of the Pine Grove congregation. We did not accept Mr. Williams as a pastor. We made other arrangements. I did not have any meeting or talk with Mr. Williams after he came to Turbeville. Prior to the time this letter was written they had tested the strength of the congregation. At that time the membership of the Pine Grove Church was approximately two hundred and seventy-five members on the roll. The test was made by a vote taken, at which time there were about ninety to keep the area in favor of unification; at the other vote taken every one that voted voted in favor of not going into unification; two or three did not vote. There were about ninety or one hundred present at that action. These meetings were public meetings

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held at the church, and it was generally known in the country that those meetings would be held. They had been announced previously. I was not present at the church conference held April 23, 1939. I was confined to my home several months during the winter and spring. After it was determined that we would remain members of the Methodist Episcopal Church, South, and after Mr. Williams arrived there, we conducted our services in the afternoons when his appointments were in the morning; when his appointments were in the afternoons we had ours in the morning. We held our Sunday school meetings at the same time. At first we did not have any regular preacher. We would get one and then another. The first regular preacher which we got was S. W. Sanders. I think this was after the suit was filed.

So far as I am aware, the circumstances of the two groups holding services, as I have mentioned, did not create any breach of the peace or create any violence or tend to create any violence. There was no occasion that I know of when there was any interference by either group with the religious services of the other, nor any action where each group tried to hold a meeting at the same hour.

Prior to the filing of this suit we Southern Methodists had not attempted to hold any meeting at any time announced by Mr. Williams, so far as I know. The hours at which services should be held at the various churches on the circuit were usually determined by the Board of Stewards of the charge—at the annual meeting of the Board of Stewards which is usually held right after the Annual Conference, that is usually decided by the Board of Stewards.

CROSS-EXAMINATION

I stated that I was not at the first Quarterly Conference of 1939. I do not know whether the three men who did not appear to be stewards by the record of the Quarterly Conference were at that Quarterly Conference or not.

The group opposed to unification, and who held services in the church, claimed to be the majority of the membership numerically, and did not contribute anything to the pastor's salary after the conference of 1938.

RE-DIRECT EXAMINATION

The group to which I belong met all debts and expenses of our pastor every year. It has been customary on the Turbeville-Olanta charge to raise what we called "conference collections." Just before the District Conference there is a drive made for benevolences, and again before Annual Conference. The group to which I belong was prepared finan-

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cially to take care of the church property there—to preserve it, to protect it, and to meet what we regard as the calls of the church of which we were members. Save for the fact that we were enjoined by the court from using that property, and had that property been there under control of our group and used by us, it would have been preserved and properly cared for.

RE-CROSS EXAMINATION

I was a delegate at the Annual Conference of 1937 when the question was submitted on unification. I voted a loud “No” and voiced the sentiment of the congregation of the Pine Grove Church.

E. N. GREEN

I live at Turbeville and have been a member of the Methodist Episcopal Church, South, holding my membership through the Pine Grove Church, for forty-five years. I am a steward of the church and also a trustee of the church property at Turbeville. I am the E. N. Green that was elected recording steward at the fourth Quarterly Conference held November 6, 1938. The minutes of that conference are not in my handwriting, and I do not know whose handwriting they are in. I did not authorize anybody to write those minutes. I was present at the first Quarterly Conference for the years 1938-39.

The permanent minutes of the Quarterly Conference held February 26, 1939, are not in my handwriting, but are in the handwriting of my daughter, who copied them off for me.

None of the trustees resigned, nor was there any change in trustees, nor was the question of trustees brought up at that conference.

The secretary of the Quarterly Conference was Carl R. Rush from Olanta. The minutes were turned over to me as recording steward to place them in the permanent volume. No stewards resigned at that Quarterly Conference, as I recall.

It is recorded that Dan E. Turbeville, Jr. was elected Sunday school superintendent at Pine Grove and that J. R. Rush was elected to that position at Olanta. At that Quarterly Conference they elected three stewards: E. L. Green, E. R. Morris, and D. Ed. Turbeville. As I recall, the pastor had the names written down. They called them out and they were elected. He nominated them. His attention was not called to the fact that we had no vacancies on the Board of Stewards. When I speak of the pastor I mean Mr. Williams.

None of the twenty-six persons elected at the fourth Quarterly Conference held February 26, 1938, had died during the period from No-

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vember 6, 1938, and the first Quarterly Conference was held in February, 1939. We had no vacancies at all.¹

CROSS-EXAMINATION

QUESTION: I want to ask you if some of the twenty-six stewards whose names appear on the list which Mr. Denny has shown you had not signified their refusal to remain members of the church after the notification given in the letter refusing to have a pastor appointed by Bishop Purcell?

ANSWER: Not that I know of.

G. M. ROBINSON

I am forty-six years old. I live at New Zion, but was born and raised at Turbeville. I am a member of the Methodist Episcopal Church, South, holding my membership through the Pine Grove Church, of which I have been a member twenty-three or twenty-four years. I am one of those adhering to the Methodist Episcopal Church, South.

I was approached by one of the pastors of the South Carolina Conference of the Methodist Episcopal Church, South, who subsequently became a preacher of the new church, with reference to my signature to a statement similar to the statement contained in the letter from L. J. Carter *et al.* to Bishop Purcell. I was approached by the Rev. Carl Turbeville. He had with him one of the communications sent to Bishop Purcell, Mr. Derrick, and Mr. Williams, setting forth the names of these people who had signed the statement. He asked me if I knew what I was signing and I told him that I thought I ought to know—I was old enough. He said he would give me my letter out of the church, and I told him I didn't want it. He tried to get me to withdraw my position.

W. L. COKER

Yes, I live at Turbeville and am a member of the Pine Grove Church at Turbeville. I am forty years old and have held my membership in that church since I was quite young. I was born in that community and raised in that church since I was about ten years old. I am the W. L. Coker who was chairman of the Church Conference held at Turbeville on April 23, 1939, and am a steward of that church. Yes, the stewards of the Pine Grove church had held a meeting prior to April 13, to discuss the question of holding a Church Conference. The question of requesting a Church Conference of Mr. Williams, the preacher who had been sent there by the Annual Conference, was discussed at the meeting, and it was decided that we would ask him to hold a confer-

¹ See *Discipline of The Methodist Church*, 1939, ¶581.

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ence. Somebody voiced the opinion that it would not be of any use to request it, but it was decided to request it of him. I called for volunteers to go to the pastor, Mr. Williams, and make the request, and A. N. Rush and A. N. Coker volunteered to go. I did not have any conversation with Mr. Williams concerning the holding of the Church Conference. I have seen the register of members, off and on all my life. P. B. McLeod was the pastor who preceded Mr. Williams. The names or signatures of the persons that appear in the column "By whom received," is that of the pastor in charge at that time. Yes, Dr. C. E. Gamble, A. N. Rush, and I have recently gone through the old register of members to ascertain the number of persons appearing on the register who were members of the Pine Grove church in November, 1938, when the two groups began to worship separately. Yes, we began with the first name on the register, Mary Baker, and went on down to the last name having been received in 1938, Billy Cole Burross; went through it from beginning to end. We made a count of the persons whose names now appear on the register, who are now alive, and who have not withdrawn, or transferred, or been expelled out of the Pine Grove Church. We made the count as of November, 1938, and the number of the names that appeared on the register was 321. We made a list of those persons out of that 321 who were actively joined with that element of the membership of the church which is remaining loyal to the Methodist Episcopal Church, South. The number is 191. It is known to me that those persons, in 1938 and 1939, are members of the group adhering to the Southern Methodist church. We have fifty-two who still do not adhere to either group. A large portion of them have moved away. I could not say whether they have maintained membership in any church. We think about seventy-eight have gone with the unified church.

A. N. RUSH

I live at Turbeville and am a member of the Methodist Episcopal Church, South, of which I have been a member since I was a kid, and I am forty years old now. I was one of the stewards designated by the Pine Grove Church to see Mr. Williams to request the holding of a Church Conference, and the other was Mr. A. N. Coker.

We went to Mr. Williams and told him we wanted to see him on the matter of holding a Church Conference. He met us on the church steps and we discussed it a good while, and he wanted to know what it was for, and we told him it was to have a Church Conference to see who was for unification and who was against it. He said he would study over it until the next day at noon. We came back at noon and he said he had not fully made up his mind, but that he did not think it would

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do any good to hold one, and he said he would let us know that night, but I did not get a chance to see him that night. I did not see him after that noon meeting when Mr. Coker and I saw him together. When we saw him at that first conference the deed was not mentioned, but we said we thought it was fair for him to call a Church Conference, if we requested it, and if a majority wanted to go for unification, O. K., and if they did not, O. K.

A. N. COKER

I am fifty-two years old, live at Turbeville, and am a member of the Methodist Episcopal Church, South, holding my membership through the Pine Grove Church, of which I have been a member about forty years. I was born and raised right there, and am one of the stewards designated to request Mr. Williams to hold a Church Conference, along with Mr. A. N. Rush. I believe it was Monday that we went to see Mr. Williams. We called at his house and we sat there and talked a good while, and finally told him our business, and he studied awhile. We told him our business was to request that he call a Church Conference to see who was going into the new church. He said he would study over it, and he said, "you all come back tomorrow at noontime." The next day, Tuesday, we went back but did not get any satisfaction at all. He said he would let us know that night. Mr. Williams said he would come to my house that night. We separated and Mr. Rush drove me home. I waited there until about eleven o'clock and Mr. Williams never came. So the next day, Wednesday, he drove up about one o'clock, got out, sat down. We talked awhile and he said, "I have decided I do not see how I can give you all a Church Conference." He said if he knew if he called a Church Conference a majority of the votes would be on his side, he would do it, but if he did not get a majority it would ruin him, and he bade me good day and left. I said, "If the majority was against unification we would go on in the church; if the majority was for it, the little bunch would be out."

M. J. MORRIS

I am seventy-nine years old and have lived about three miles of Turbeville all of my life. I am a member of the Methodist Episcopal Church, South, holding my membership through the Pine Grove Church, and have been a member of that church about fifty-three or fifty-four years. I have known this property there all my life and the two acres of land on which the building stands, and have been a trustee of that property about thirty-six years. I am a steward and have been a steward since about 1895.

I knew Mr. W. J. Gamble, who executed the deed to that property

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dated May 7, 1877, and knew his son, W. D. Gamble, who executed the deed of 1897. I was a member of that church in 1897 and became a steward about that time. There was some question about the clause in the deed which W. J. Gamble executed May 7, 1877. W. D. Gamble being the only child, he made the deed, that being the only way to give a deed with that clause in it.

My first recollection is that there was a log building on that property sixty-five or seventy years ago. They said that was the first building. There was a bush shed there before the log building. I don't know anything about that, but the log building was there, as I remember. Then they took down the log building and put up a frame building about 1882, as well as I remember. They never did finish that church and they built another one; tore that one down and built another one, I suppose about 1910. That was not the second building on the site; that was the first frame building. There was a log building, then a frame building put up, and then another frame building. They completed that and it burnt up about twenty-five years ago. Then they erected the brick veneer building that is there now.

They raised part of the funds necessary to erect the first frame building, part out of the congregation and part out of the people who met there. The building of that first church was entirely a local matter. When the second frame building was put up I was then a man and was also a steward of that church. It was paid for by the members of the Pine Grove Church. We were not assisted with any general fund. The funds to erect the brick veneer building were raised partly by subscription and partly from the Board of Church Extension. The mortgage given to the Board of Church Extension was paid off and the mortgage burned. There is not any lien that I know on the property, which is the subject matter of this suit. In other words, the property which stands there today, and which is the subject matter of this suit, has been fully paid for and bought by the members of the local congregation.

I think they had about four hundred members in November, 1938. That includes everybody on the church roll, active and nonactive.

I am a member of the group that declined to go into the merged church. Since this suit was filed we have been holding services in the schoolhouse near there. The average attendance each Sunday morning is about fifty or seventy-five. The average attendance we had in 1938, before the congregation was more or less divided, would run anywhere from one hundred fifty to two hundred. I have not attended any of the meetings held by the church in connection with this matter in controversy.

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CROSS-EXAMINATION

I am the M. J. Morris who signed the deed attempting to transfer the property of the Pine Grove Church to a new set of trustees. I got my authority to sign that deed from the members of the church. I did not get it from the Quarterly Conference held by the pastor. I got it from a Church Conference. I do not know who was present at that Church Conference. I was not there. I do not know whether the pastor was there or not. He said he was not there. It was done under advertisement. I don't know who advertised it; it was advertised by the stewards. I do not know what stewards because I was not present, and do not know when that meeting was held.

From the time I first knew the Pine Grove Church it adhered to the custom of the Methodist Episcopal Church, South, and received all the pastors sent to the church by the Annual Conference. In 1939, I believe, after the General Conference at Birmingham, Mr. Williams was appointed pastor of the Pine Grove Church. I did not receive him. I do not know whether the church is still going on or not. The last time I went there was in June, 1938. I do not know how many of the fifty or seventy-five members meeting at the schoolhouse were members of the Pine Grove Church. The members of the new church are, in a large degree, from around the old church, and those members come in from the surrounding country. I still claim I am a steward. I have never tendered my resignation as a steward to the pastor. I claim that I am still a steward of the Methodist Episcopal Church, South. I did not tell them I was going to quit the church. In June, 1938, I quit going around and performing the duties of a steward because my wife was sick and I had to stay at home.

QUESTION: You know, as a steward of long standing, that it is the duty of a steward to advise with the pastor about all matters touching his administration of the local church, don't you?

ANSWER: He never come to me for any advice. I do not know anything about the law of the church. We, the stewards, raised the support of the pastors, but we never raised anything for Mr. Williams. I never go to the unified church. I have never been a member of the unified church. I have always been a member of the Methodist Episcopal Church, South, and it looks like if they turned me out they would notify me. I have never been notified of any trial.

RE-DIRECT EXAMINATION

[By Mr. Denny]

QUESTION: Mr. Morris, have you ever ceased to perform your duties as a steward of the Pine Grove Methodist Episcopal Church, South, or

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as a trustee of the Pine Grove Methodist Episcopal Church, South.

ANSWER: If I did, I don't know it.

RE-CROSS EXAMINATION

QUESTION: Is there any church there other than the Pine Grove Methodist Church?

ANSWER: One there now.

QUESTION: Which one?

ANSWER: Brick veneer church.

QUESTION: You consider you are a steward of that church?

ANSWER: Yes, sir.

QUESTION: You don't go to it?

ANSWER: Because they put me out.

QUESTION: You didn't go a year before that. Which one do you regard as the Methodist Episcopal Church, South—the one at the schoolhouse, or the brick church?

ANSWER: We hold services at the schoolhouse, but we do claim this brick veneer church.

RE-RE-DIRECT EXAMINATION

In other words, we claim this real estate that is the subject matter of this suit.

VIII

BRIEF OF THE TESTIMONY OF THE REV. L. D. B. WILLIAMS

[Sworn for the Plaintiffs]

TURBEVILLE IS THE LOCATION OF THE PINE GROVE CHURCH. I AM A MEMBER of the South Carolina Conference, of which I became a member in November, 1918. I was appointed pastor of the Turbeville-Olanta Circuit in November, 1938, at the Hartsville conference by Bishop Purcell. According to the minutes of the Annual Conferences, there were 423 members of the Pine Grove Church with names on cards, some of whom were not reported in this annual report, some of whom have been found since I have been there. They were never marked off or disposed of. I was reappointed to that church in 1939, at the Orangeburg conference. The disturbance at that church had arisen before I got there. On my arrival I met with quite a large group of folks to welcome me to the charge. I judge that there were one hundred at home that evening. The following morning they had arranged a Thanksgiving service. I went over to the service and was there during that time. I was not recognized by anyone who had charge of the service. I passed it up without any comment whatsoever, but could easily see the line that had been drawn. Then, on the Sunday following, they kept up their regular services without a break, through Sunday preceding my going there, but on the first Sunday I was there they had arranged for their hours of meeting other than the hours we were to have our regular service. I am referring to the folks who were not continuing with the loyal group.

The services by the two groups, the preaching and the church-school services, were at different hours. The groups did not join in the same service. The young people held their separate services, the dissidents following the loyal group. I mean by "loyal" those who have entered The Methodist Church. I could not meet with the young people at each church, for they held their services Sunday evenings about the same hour. The time when the loyal folks went out, the dissidents came in. This meeting—one crowd going, another coming—you could feel the atmosphere clash. Our regular constituted services were, church school at ten o'clock. For instance, if we had church on the first Sunday morning, we had church school at ten o'clock and preaching at

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eleven o'clock. Then in the evening with the young people's services about seven or seven-thirty. Those were the hours for the first Sunday, and about two Sundays out of the month they would have the church school in the morning following by preaching. Then they would have their church school on the Sunday I was not present in the morning. The next Sunday would be church school in the afternoon, about three o'clock, with preaching at four o'clock, then evening services. Always the young people's hours were around seven or eight o'clock. We did not have preaching at night. The dissidents began having services at different hours the first Sunday I was there. Up to that time the congregation had been meeting as one.

The deed conveying the property was dated April 24, 1939, after I went there. After I went there there was no change in services. Both groups had services at different hours. Then there came a request to hurry up the League on one Sunday evening in order that they might have preaching. We had been teaching a mission study class and had agreed that we would not have League service on Sunday evening, but would conclude our mission study group on this particular evening. The president of the League was asked by one of the dissidents that we hurry up the League service in order that they, the dissidents, might have preaching. I told the president to say to them that we were concluding the Sunday evening mission study which would take us two hours, and we could not hurry through. We anticipated nothing further. But we went over that evening at the time for the League to begin our class. In about forty-five minutes a group came around the church and opened the door; they shut it. They talked on the outside which was considerably annoying, and after a while they came in, not all together, but quite a space between groups. Some went in the choir and some in the auditorium, and it was so annoying that the teacher had to abandon teaching work, so we dismissed our class and they had their service. Then later that notice came to me, handed me by the sheriff. That is, the notice that the property had been conveyed to another board and forbidding me to trespass on it. The notice was the same as that attached to the complaint. The notice was served by Sheriff Gamble of Clarendon County, in which the church is located. The notice was dated May 10, 1939. I know nothing of the circumstances under which the deed was made. I did not consent to it. No Quarterly Conference was held at which the matter was brought up. I never failed to meet a Quarterly Conference. I called no Church Conference. I was notified that one was held. I did not

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attend it. The call was signed by C. E. Gamble, W. L. Coker, A. N. Coker, E. N. Green, R. S. Green, T. H. Coker, M. J. Morris, J. G. Cole, James S. Plowden, and C. E. Coker. They were the ones who called the meeting. There was a notice posted, one on the outside of the church building and one on the inside, which I saw put there. I was in my study and heard someone knocking as if they wanted to find me. I went to the front of the church, and I saw the gentlemen putting these notices about the Church Conference. The man was W. L. Coker, one of the stewards. I was asked to call a Church Conference but declined to do it. After this deed was signed and that notice was given, then a group of men went around the outside visiting my loyal folks, advising them that at the next Sunday they were going to be at the church for the purpose of taking over the regular service at the regular hour. Then it was that my people came to me and we consulted together in the matter, and before the next week we started the injunction to prohibit them from interfering with our services. They had L. B. McCord, a Presbyterian preacher from Manning, and H. W. Sanders, preaching there. H. W. Sanders had been a former member of the Upper South Carolina Conference. I heard that he had become a Nazarene. They were not preachers belonging to the South Carolina Conference—people of other denominations. I believe there were a few others who came at night when they had no one else. I was informed by some of my officials that they were going to take charge of the church. Since the injunction was signed, there has been no interference with the services and I have gone right along in the regular way. They went on and had their services elsewhere and we had ours without interference. Out of the 423 members, it is not possible to be accurate in stating how many stood by me. There is quite a group of them. There was a list sent to me by Dr. Gamble at the session of the Orangeburg Conference held in 1939. The name of the sender was not on the list. There were 254 names on that list, I believe, 51 not members of either church. Some of them we do not know who they are. Several people whose names appeared on the list told me that they had not signed it. We have some fifty to a hundred in attendance—at preaching around seventy people. There are some who support financially who do not come. Some at a distance who cannot come. I do not see anything to compare with last year. They met their obligations wonderfully. Paid every obligation, every penny, without any hesitancy. The best we could estimate, approximately half of the 423 we regard as loyal members of the congregation. They have not withdrawn or intimated any withdrawal. Some attend sometimes and for months they do

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not. While the two groups were holding meetings in the church, I was not consulted in any way by the dissenting group as to the preachers to fill my pulpit. A. N. Rush talked to me about the situation. I was in his house and went over the situation with him. As far as I could determine the situation, he seemed to be deeply concerned about the situation. His spirit about the matter was very kind. There was nothing bitter about it. My observation is that there is not now the hard feeling about the matter that there was. The bitterness does not seem to be there. I hope that it will become extinct.

CROSS-EXAMINATION

I am a member of the South Carolina Conference of The Methodist Church. I would not think that I am now a member of the Methodist Episcopal Church, South. I am not a member of any particular congregation. I do not claim allegiance to any other church. Yes, before I went to Turbeville, I received notice that these people did not wish to go into the so-called Methodist Church; that they would not be bound by any action of that church. They wrote Bishop Purcell, Mr. Derrick, and me a letter, and I came to the church with full knowledge there was a considerable dissenting group. They requested me to call a Church Conference, and I refused. In the law of the church, the pastor calls Church Conferences, to the best of my knowledge. After they had requested me to call the Church Conference, they gave notice that they were going to call one and posted written notice. Upon my refusal they called the conference. They allowed me to hold my services at the regular hours. I did not attend their services and have never been there when they held their services. Yes, I will deny that they often had as many as five hundred at their services. At the time of the Turbeville Annual Conference they had maybe three hundred and fifty present, that is the one held on June 7, 8, 9. There was no way for me to tell at a distance how many were at that conference.

After they had gone and held this service, they using the hours not used by me, they finally notified me, through loyal members, to the effect that they were going to hold services at the regular hours. I took the matter up with my regular board before any action, then I went to Bishop Purcell and he said for me to bring this suit. I signed the complaint that brought these people to the courthouse, because they proposed to conflict with the hours I thought were my hours. Besides that threat, I also heard rumors. Up to that time there had been no disturbance among the members by way of actual conflict, except in coming and going of the young

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people in the hours when passing one another. I guess there are sinners on both sides. I do not know of anything done or said calculated to breach the peace, from firsthand information. So far as I recall, these people sent me notice to the effect that they did not want their names transferred to any merged Methodist Church. There was nothing in there, except they were not satisfied with unification and did not want to merge.

It is hard to say how many of the 423 are not active in either group. I expect one third of them are scattered. There are, in my judgment, about 300 members of the church. Of this 300, I do not believe I have locally 150 on my side. None of the 70 came in from other charges. There are none from other charges transferred to Turbeville. I do not recall now that any transferred from my circuit to Turbeville. It is not a fact that a great number of attendants at Turbeville are members of my other two churches. None have tried to wean me away.

Yes, I went to talk to Mr. Rush. I did not try to wean him away. I could not say that there was a disturbance when they were coming on Sunday mornings. That was nothing but a threat of disturbance. Nothing actually happened. I would not have doubted that there might be physical violence. I do not know whether one of the preachers was an Episcopalian, a Presbyterian, or a Nazarene. That was hearsay. There are several branches of Methodism. There is an African Methodist Episcopal Church. I do not recall all the branches now. There has been a Methodist Protestant Church, existing independent of our organization. Then The Methodist Church. Then the old Methodist Episcopal Church, South. A good many types carry the name Methodist in their name—sixteen or seventeen, I believe. I haven't kept up with the churches which carry "Episcopal" in their setup. There are numbers of them. Those names, "Methodist" and "Episcopal," are general terms applied to various groups. Each one is distinguished by the way it is written. Yes, the purpose of all ministers is to try to spread the doctrine of Christianity.

RE-DIRECT EXAMINATION

[Reading from the *Manual of the Discipline*]

While the Discipline suggests an order of business for the Church Conference, the preacher in charge is wisely given discretion to limit attention at a session to a single topic or to a few topics, so as to emphasize any important and neglected interest, and to adopt expedients that may be suitable and necessary to forward that interest.

Under that paragraph, if the pastor is not affirmatively charged with

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the duty of calling the Church Conference, he is the one who says what is going to be done at that conference—transact the business of the conference. While the *Discipline* may not, in words, say that the pastor calls the conference the pastor does give direction to the business of the conference—what shall, and what shall not, be considered.

MR. GRAYDON: We call attention to the fact that the *Manual* was published in 1931 and the *Discipline* in 1934.

MR. DENNY: The situation is this: We shall show prior to 1934, under the law adopted by the General Conference, a pastor called a Church Conference. That was the law in force at the time the *Manual* was written. In 1934 the General Conference repealed that law.

THE REFEREE: That is a statement in anticipation of the evidence. The *Manual of the Discipline of the Methodist Episcopal Church, South*, nineteenth edition, page 75, paragraph 6, reads:

While the Discipline suggests an order of business for the Church Conference, the preacher in charge is wisely given discretion to limit attention at a session to a single topic or to a few topics, so as to emphasize any important and neglected interest, and to adopt expedients that may be suitable and necessary to forward that interest.

MR. WILLIAMS RESUMING: My recollectoin is the request was based upon trying to get together again to take a vote for the purpose of sending it to the Uniting Conference. The purpose was, if I could determine it, to tell just how the church stood—for or against unification. There was no written request made to me stating the purpose for which the meeting was to be held. I had not been advised there was any intention on the part of this group to convey the property. I had a right to consider what matters were to be considered. I saw no good to come from the call of a Church Conference, therefore, I did not call it.

RE-CROSS EXAMINATION

Mr. Rush told me what the idea was. He did not tell me they were going to make a deed transferring the property. I did not consult with the bishop or the presiding elder.

RE-DIRECT EXAMINATION

I was the preacher in charge, and the duty to act as president of the Church Conference under the 1934 and 1938 *Disciplines* is as shown by the following provision, which is the same in both the 1934 and 1938 *Disciplines*:

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All the members of each local Church and resident members of the Annual Conference, shall come together as often as necessary to hold a Church Conference, over which the preacher in charge shall preside. It may be held at any time most convenient for assembling the greatest number of members; but if on the Sabbath, it should not interfere with the morning public worship.

IX

BRIEF OF THE TESTIMONY OF THE REV. C. C. DERRICK

[Sworn for the Plaintiffs]

I AM A MEMBER OF THE SOUTH CAROLINA CONFERENCE. I WAS FORMERLY a member of the Methodist Episcopal Church, South. I am now district superintendent of the Kingstree District. This is my second term, but I was on the district in 1921, 1922, 1923, 1924, before, beginning again in 1937, 1938, 1939, and part of this year [1940]. I was there when Mr. Williams was sent there as pastor. The Turbeville-Olanta charge is in that district and the Pine Grove Church is one of the churches. As district superintendent and former presiding elder of that charge, I am pretty familiar with the happenings in that district. A great deal is just what is reported to me in conversation. Presiding elder and district superintendent is, practically speaking, the same. I have the same duties in either capacity. Part of these duties is holding quarterly meetings in the several charges. I held Quarterly Conferences in this Pine Grove Church in the Turbeville-Olanta Circuit. The question of making a deed by the trustees of this particular church was not brought up any time in the Quarterly Conferences. This deed was not by authority of any Quarterly Conference that I held. I know of no other Quarterly Conference held. The district superintendent can call a special session of a Quarterly Conference. He presides over it. In his absence, provision is made for another presiding officer. I know of no such Quarterly Conference. There is very little I could say about the situation over there in Turbeville that could go into the record, most of my knowledge is from hearsay. I know this with reference to the injunction. Preacher Williams came to see me, and we went to Cheraw to confer with Bishop Purcell. From there we went to Columbia and reported to Mr. Sims our conversation with Bishop Purcell. In consequence of these conversations we applied for an injunction.

Yes, there was a request made of me not to send a preacher to this church. The paper was received by me, copy by Bishop Purcell, and of which I think you have heard. We considered it. It was brought up in the cabinet meeting. I reported to the bishop and the cabinet that my information was that there were some twenty-five

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or thirty families who were expecting us to appoint a preacher and on the strength of that, we did. I so notified one of the signers of the paper that we had considered it. The notice came through the mail and I turned it over to Mr. Sims. It came through the mail on November 8, 1938. [Here the witness was shown a copy of a petition purporting to be signed by members of the Pine Grove Church.] I do not recall a copy of this being handed to me. I saw a copy. The enrolling or taking off of names is not my responsibility. It is the pastor's. I could not say whether it was sent to the bishop or not. I got a copy of the letter of November 19. I do not recall its being sent to me but I saw a copy [referring to the following]:

We, the undersigned, members of the Turbeville-Olanta charge of the Kingstree District of the Methodist Church, South, do hereby notify and instruct you not to transfer our names to the rolls of the so-called merged Methodist Church, and you are hereby further instructed not to include our names in any report to the so-called merged Methodist Church, for it is our determination to remain members of the Methodist Episcopal Church, South.

It is possible that I received a copy. I could not testify that I did not. It came to the Orangeburg conference following the Uniting Conference. It is my understanding that church property can only be sold for certain purposes. It is provided that church property can only be sold with the consent of the pastor in charge and the Quarterly Conference. The property had not gone out of use and there was no intention of moving to a new location that I know of.

CROSS-EXAMINATION

I am a member of The Methodist Church and was formerly a member of the Methodist Episcopal Church, South, and of the Annual Conference which directs the disposition of itinerant ministers. Yes, I had consulted with Bishop Purcell before I went to Mr. Sims. Bishop Purcell suggested that we see Mr. Sims, who, by action of the conference cabinet, had been designated as attorney. Bishop Purcell was at the cabinet meeting. I talked to Bishop Purcell, then went to Mr. Sims. We all agreed it was best to try to protect the use of the church by obtaining an injunction. So far as I know, it was the pastor who got in touch with Mr. Turbeville. As far as I recall, the pastor designated certain men that would sign the complaint. The pastor had already been talking about the complaint before we had that meeting with Mr. Sims. I cannot say whether a preacher would have been appointed if twenty-five or thirty families had not so desired. It is not my disposition to force a thing against a

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man's will. I heard that the twenty-five or thirty families were looking for a preacher. The paper sent to me contained the name of every steward, except M. L. Dennis, who, I understand, was a steward at the time. In the calling of a meeting to dispose of church property in the absence of a preacher that is responsible, the presiding elder could agree to the disposition of the property in the absence of a regular preacher in charge. I would say—only as an opinion—that I think that the church followed its legal procedure, and if it did, the Methodist Episcopal Church, South, is a part of The Methodist Church, and it is my opinion that, if the procedure was legal, there is now no Methodist Episcopal Church, South.

ON RE-DIRECT EXAMINATION

It is my opinion that the Methodist Episcopal Church, South, the Methodist Episcopal Church, and the Methodist Protestant Church were united, and carried into the new church everything they had—members, property, everything they had went in. I would say their rolls of membership and the church property was carried. A man's membership is his own business, and no force can keep him in any church against his will and he has a right to withdraw any time he pleases and to go to any other church. When the act of union was consummated it did not require any affirmative act to carry a man's membership into the new church. Getting out was an affirmative act on his part. In South Carolina there are two rivers, the Congaree and the Wateree, which flow together and they form the Santee. In the Santee is everything that was in the Congaree and in the Wateree, and that is what happened in the merger of the three churches. All went on as one church, if a fellow wanted to go. Unless he did something himself he went along, which is true of all churches.

I was present when delegates to the Annual Conferences were elected by the District Conference in my district. My district was represented. I was present when delegates to the Uniting Conference were elected. Normally all the preachers of the Kingstree District and the other districts were members of that Annual Conference and attended that conference. In addition to the clerical members, the district also elected regular lay delegates in 1938. The law was changed and, in 1938, delegates to the Annual Conferences were elected by the Quarterly Conference. The Quarterly Conference of the Turbeville-Olanta Circuit elected a lay delegate to the Annual Conference in 1939. In addition to them, the preachers were members of that conference. In the conference of 1939, our district had twenty elected lay delegates. The South Carolina Conference elected

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delegates to the Uniting Conference. In the conference of 1938, the delegates from the Kingstree District attended the Annual Conference. They were elected for that purpose and attended the Annual Conference of 1939. I was present when that conference went out of business, and was organized as a conference of The Methodist Church, according to the merger. There was no objection on the part of the Pine Grove Church save this paper that was sent up there. I do not recall that there was a dissenting vote; the minutes would show. As I recall it, it was a unanimous action. Yes, when the South Carolina Annual Conference of the old church converted itself into a conference of the new church, the same ministers and the same lay delegates reformed as The Methodist Church, adding the preachers that came over from the Methodist Protestant Church. We had no white Northern churches in the area of our conference. Just one exception. There was one of our clerical members whose name was dropped from the roll, Rev. Mr. Chewning, pastor of the Mullins Circuit, who had let it be known that he would not become a minister of The Methodist Church. That action is recorded in the minutes. After the conversion into the new church, the new conference elected delegates to the General Conference that was recently held in Atlantic City. The conference also elected delegates to the Jurisdictional Conference, recently held in Asheville, North Carolina. The conference has participated in all of the activities of The Methodist Church since its conversion at that conference, going along regularly as a member of The Methodist Church.

ON RE-CROSS EXAMINATION

I heard something to the effect that Bishop Denny informed the Uniting Conference and the General Conference of 1940 that he would remain a bishop of the Methodist Episcopal Church, South, and would not become a bishop of The Methodist Church. I would not consider that Bishop Denny is a bishop of The Methodist Church any more so than a member who refuses to go into the merged church. Dr. Gamble is a member of the merged church if he wants to be. I know that in writing and publicly he stated that he would not become a member of The Methodist Church. In my opinion, Dr. Gamble is not a member of The Methodist Church. He has publicly stated that he will not become a member of the merged church. He certainly is not guided by its rules. When the Methodist Episcopal Church, South, was in existence, he was a member in good standing. He was never, to my knowledge, expelled. He never withdrew from the Methodist Episcopal Church, South. I am going

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on the proposition that the Methodist Episcopal Church, South, existed until the translation referred to awhile ago. I would say that Dr. Gamble, by virtue of the fact that he was a member of the Southern Methodist Church who had not been expelled, withdrawn or died, did not become a member of The Methodist Church, on the occasion of the translation, because there is his statement. He is still a member of the Methodist Episcopal Church, South, if there exists such a church.

ON RE-DIRECT EXAMINATION

It is only a matter of opinion whether those who declined to go into the merged church are members of any church—a very pretty question. It is a matter which is rightly to be determined. It is my opinion that the Methodist Episcopal Church, South, ceased when the translation was made. If the merger is valid, your name has been carried into The Methodist Church. Unless you withdraw, you would be a member of that church. If you make a public declination to being a member of the new church, that is different. If I were your pastor and the merger determined to be valid and you made that declination, I would feel it first to be my duty to ask you to express your conviction and determination, and if you declined to go into the merger, I would just mark you “withdrawn.” It is a very interesting question, and one not free from doubt, whether if he has not become a member whether he can withdraw.

ON EXAMINATION BY THE REFEREE

Under the law of the old Methodist Episcopal Church, South, the Church Conference did not elect any members of the other conferences. It elected one secretary for itself who, by virtue thereof, became a member of the Quarterly Conference. The first, or lowest, step in the conferences was the Church Conference, which elected no delegates to anything. Above that came the Quarterly Conference which was composed of all the official members of the charge, including the stewards, the trustees, Sunday school superintendent, and other officials. That was presided over by the presiding elder. The Quarterly Conference was composed of the officials of each congregation in the charge. The pastor is responsible to the Annual Conference and yet he attends the Quarterly Conference and makes a report. His name is on the roll. The Quarterly Conference elects delegates to the District Conference. If one church is able to support a pastor, that composes a charge. Only one church in that charge. If it takes a combination of churches, say six churches, then these six churches

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compose the charge, and all are grouped and the Quarterly Conference is made up of the officials of the charge. If the church is able to support a minister, that becomes a charge. Each charge has a Quarterly Conference. That Quarterly Conference is made up of the officials and the pastor, and is presided over by the presiding elder. Next above the Quarterly Conference is the District Conference. The District Conference includes the preachers within the district, whether retired or not, local preachers within our conference, the district trustees, and delegates elected by the respective Quarterly Conferences. The district trustees are laymen. Each Quarterly Conference elected three delegates and the charge lay leader made the fourth. Each charge had four delegates, one the charge lay leader—he was an officer of the charge elected by the Board of Stewards. They got together in the beginning of the year and elected a chairman of that board. He became charge lay leader. He was a member of the district conference without specific election thereto. The three delegates to the District Conference were elected from the entire membership of the church. The members of the Quarterly Conference were officials. Lay delegates to the District Conference were largely elected delegates, rather than ex officio members. There are about three or four laymen to one preacher in the District Conference. One preacher has at least four laymen. The delegates to the Annual Conferences were laymen and elected for each district by the District Conference. I cannot give you the exact number. We elected in our district, twelve laymen; they were elected by the laymen—the preachers did not have a vote—with a certain number of alternates. At one time they were elected strictly by ballot. The law was modified and permitted nomination, which could be made from the floor or anywhere. The delegates could be elected from the entire membership of the church. On the other hand, all of the ministers who were members of the District Conference were official members of the Annual Conference without election. The only election at the District Conference were the lay delegates.

ON RE-DIRECT EXAMINATION

Over the whole thing was the General Conference. It met every four years and was composed of an equal number of ministers and laymen elected by the Annual Conference, laymen by the laymen, and ministers by the ministers. In 1938 the South Carolina Conference had five preachers and five laymen as delegates to the General Conference. These were apportioned according to numbers. The General Conference legislated for the church. It made the law.

X

BRIEF OF THE TESTIMONY OF BISHOP JOHN M. MOORE

[Sworn for the Plaintiffs]

I LIVE IN DALLAS, TEXAS. I WAS BORN AT MORGANTOWN, KENTUCKY, where I lived until I went away to school. I went to school at home until I graduated, then I took the degree of Doctor of Philosophy in 1895, but in the year preceding, I spent one semester in the University of Leipzig and one at Heidelberg in Germany, and came home and joined the ministry at the St. Louis Conference of the Methodist Episcopal Church, South. I have been connected with that work ever since—for forty-five years.

My first appointment was at St. Louis, where I spent three years at the Marvyn Church in that city. I was transferred to the West Texas Conference, which embraced the southern part of Texas, and was appointed to Travis Park Church in San Antonio; then transferred to the North Texas Conference and appointed to First Church in Dallas; was managing editor at Nashville for three years; then appointed by Bishop Candler to St. John's Church in St. Louis in 1909, and the next spring I was elected secretary of the Home Mission Board and went to Nashville and served eight years, which brought me to 1918, when I was elected to the episcopacy. Since that time I have served four years in Brazil, supervising the work there; had eight years in Texas, New Mexico, and Oklahoma; four years in Georgia and Florida; served the last four years in active service in Arkansas and Missouri. Since May, 1938 I have been retired.

I was secretary of the College of Bishops from 1927 to 1937. Then on the death of Bishop Mouzon I became senior bishop, which is merely an office due to seniority. The last half year in the college I was senior bishop and presiding bishop.

I have been connected with the unification movement since 1914, which was, in reality, the beginning of the movement, that is, the movement looking towards the consummation of the union. In 1914 the General Conference made a declaration to the effect that union would be feasible and desirable on the basis of certain proposals that were sent in by the Commission on Federation. The work of unification began with the commission provided for by

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the General Conference, and the first commission had its first meeting in 1916, and I have been a member of every commission engaged with the working out of a plan to be adopted and recommended by the commission. I wrote that first declaration in 1914, which has been the basis upon which the Southern church has always acted.

The commission changed from time to time. For instance, the Commission on Federation had on it, Bishops Wilson, Hoss, and Denny, Dr. F. M. Thomas, Dr. R. S. Hyer, and others whom I do not recall. Nine of us were appointed in 1914 and we selected, under the authority of the General Conference, the additional sixteen that made up the commission. When the General Conference met every four years the personnel would be changed somewhat. In 1918 it was changed somewhat, and in 1922 it was a little different. In 1926 there was no Commission on Unification appointed. There was a Commission of Exploration, but not one to build a plan; and a similar commission was appointed in 1930. But in 1934 a commission was appointed to produce a plan, and it did produce a plan and finished its work on August 18, 1935.

The Southern commission had various members. The last commission elected Bishop Mouzon chairman, as he was senior bishop. He was a South Carolinian, a graduate of Wofford College. He was chairman, but upon his death I was made chairman of the commission, and then was in charge until the plan was adopted. All through, I was on various committees that dealt with the matter of the plan. My work had to do almost entirely with the plan itself. The plan was produced and was published to the church in all the church papers, and in most of them more than once, acted upon by the General Conference of the Methodist Episcopal Church in May, 1936; acted upon by the General Conference of the Methodist Protestant Church in 1936, and then it was that the Annual Conferences sent in resolutions asking the bishops to allow their conferences to vote on the adoption of the plan in 1937. Twenty-five out of the thirty-eight conferences in the United States asked that this be done and the bishops acceded to the request. Then they prepared the question that was to be presented to the Annual Conferences upon which the vote would be taken to adopt the matter. That was the custom that was always followed in the church. The bishops, so far as I know, always prepared the question. The question was prepared and sent to the secretary and it was put in the hands of each bishop. Each bishop took that question in printed form in three copies to each of his Annual Conferences, and then

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presented the matter, read the question, and then there was a vote on it. There was transmitted along with this question, a copy of the Plan of Union, so that each Conference not only had the question but had the actual plan before it; it was actually presented as a part of the question. The question which the College of Bishops submitted, appears on page 138 of the *Journal* of the General Conference at Birmingham. It was prepared by the bishops, delivered to the conferences, read to the conferences, by myself in each of the five conferences that I held, with the Plan of Union attached thereto, which was not read. Yes, the Plan of Union was published in the church press. I was especially interested as chairman of the commission. The commission finished its work in August, and there was some sort of work in the printing office that didn't allow it to get out until November or December. It was published in 1935, about November or December. The three copies were sent to the Annual Conferences, after being signed by the president and secretary. One copy was retained by the secretary for his record; one copy was sent to the secretary of the College of Bishops—at that time Bishop Dobbs—and one copy to the book editor at Nashville. The certificate was to the effect that the vote on the question had been taken—the total vote, the affirmative vote, and the negative vote. I was present when these certificates were presented to the College of Bishops. The secretary of the College of Bishops presented the certificates in open session. The statement which appears on page 138 of this *Journal* is a correct statement of the vote as shown by the returns. They were attested by the secretary of the conference and I was present when the votes were counted, and I know that the certificate was correct.

The adoption of a constitutional alteration requires a three-fourths vote of all the members of all the Annual Conferences. We had all the votes taken added together. There must be three fourths of them in the majority, and then there must be a two-thirds vote of the membership of the General Conference, either of the General Conference meeting immediately after or the General Conference that may immediately precede. The vote may originate in the Annual Conferences. They may vote first, as found in paragraph forty-three, or the General Conference may vote first. In this instance, the Annual Conferences voted first, for the reason that they had a definite proposal before them, whereas, when they originated in the Annual Conferences, it was difficult to get an agreement on the formulation of that which has to be presented. The General Conference votes first and after it [the question] is formulated and they pass on it.

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Then the Annual Conferences can do so. In this instance, it was a plan that could not be changed by any one of the Annual Conferences without being resubmitted. No amendments could be allowed. There was absolutely no other way by which this Plan of Union could be adopted except by the constitutional process. Union might have been adopted, I think, by the General Conference. I think that for the reason that the General Conference, according to the finding of the Supreme Court of the United States, did divide the church. But it was not merely a union upon which we were voting. It was a Plan of Union, which is constitutional in form, giving the constitutional structure of the church that is to come out of the merger. There must be a constitutional process. We were not anxious to adopt union unless we could adopt the Plan of Union. We had to know what procedures we would go into. In so far as uniting the churches without submitting the matter to the Annual Conferences, is a question I could not answer definitely. It is my opinion that in view of the fact that, according to the opinion of the Supreme Court, the General Conference had the power to divide the church, the General Conference would have the power to unite. But that becomes academic because without a plan, no union would be desirable. They never would have voted on it without a definite plan. The plan was not submitted to the local congregations because the vote of the local congregations could have no legal value or force. The constitutional principle was written into the law as defined and expressed, and there could be no way of adopting the Plan of Union except in that way, and a vote of the congregations would have nothing to do with the legal procedure. It would have been just a straw vote.

No question has ever been presented for constitutional action to the local congregations, not even the Plan of Separation in 1844. That was adopted by the General Conference. There was stipulated in that Plan of Separation that the conferences lying along the border line should vote as to which side they were to adhere to. They were not to vote on the Plan of Separation. They voted on whether to adhere to the North or the South. To the north of that border, to the Methodist Episcopal Church; those to the south, to the Methodist Episcopal Church, South. The Southern conferences were made up of preachers only, no laymen. These conferences could indicate whether or not they wanted separation. The local congregations did not have anything to do with it. Votes were taken in many congregations in the South, as we know, for the purpose it was, to establish a greater allegiance to the Methodist

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Episcopal Church, South. There were no votes taken in the North. The votes taken in the South had no legality. The separation had been accomplished by the act of the General Conference, subject only to the wishes of the Southern conferences. This last plan was not submitted to the local congregations. It would have added nothing to the legality of it. It would have been purely a straw vote.

As a bishop, I have no membership in any local church. I have no membership in any Annual Conference. Our membership, as bishops, is in the general church through the Council of Bishops. My membership is in The Methodist Church—a great spiritual body, an ecclesiastical body. To be sure, you take a district superintendent or pastor—he is not a member of any congregation. He is a member of the Annual Conference, and his relation to the Annual Conference is merely for service. But he is a member of the itinerant body. He is a minister of The Methodist Church, subject to appointment anywhere in The Methodist Church, inside or outside of the United States. He functions through the Annual Conference of which he is a member, just like a bishop functions through the Council of Bishops. The bishops have no local membership. Their membership is as strong and valid and about as useful as any membership. The Methodist Church is a body that is entirely church wide, and the bishop is a member of that body, and when a man joins a local church, he joins that body, that body receives him and takes his application. When he presents himself he is not voted on by anybody. The pastor, who is himself a minister under the authority given him by the entire denomination, gives a person admission into the membership of the great body. If he wants to go anywhere else, he has a perfect right to go. He can go to any church. If the pastor meets him at the door and did not want him to go in, I don't know what would happen. If a member in Massachusetts came to South Carolina and brought a certificate showing that he was a member in Massachusetts, he would have a right to be admitted to the church in South Carolina, if the pastor wanted to receive him. He might take the matter up as to whether or not he met the requirements of the church. I do not see why the pastor might not refuse him. The qualifications of members are fixed by the General Conference, which is the law-making body of the church, which is the mother. The conditions of membership are just like the conditions of the ministry. Membership is a united body with functioning cells. You take congregationalism. It is an aggregation of units, co-ordinated units, to be sure. In The Methodist Church it is different. It is an organism of functioning cells. Like a presbyterian church. It is a presbyterial body, a body

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of elders, which is different from congregationalism. Ours is a collectivism. We are united.

A member has a sort of dual status because of his relationship as a cell in a body. He has local functions to perform, he has to support his local congregation. But he is just as much under obligation to support the world-wide denomination as he is to support the local interests of the church. It is just as much his business to help build a church in Arkansas as in Charleston. Of course the degree of his responsibility would be different. He would have a greater responsibility where he lives, but he cannot avoid the responsibility of taking a degree of interest in the denomination. Elsewhere he has a dual responsibility, something like the citizen owing allegiance to the whole country, state, county, and city.

The property is connectional, as the membership is connectional. Under the state law we are not a corporate entity. In view of the fact that we have so many interests to take care of, we must delegate that authority to local units that can have civic responsibility wherever they are. For instance, a man is a member of a church in Charleston. But, of course, that church must be under local trustees. But those local trustees cannot act except by the order of the Quarterly Conference, and the Quarterly Conference is an ecclesiastical body, and they cannot act otherwise than under the law of the church originated by the General Conference. So the control of our property is put civically under local trustees, whether of the church or an orphanage or college, but so far as the responsibility of these institutions is concerned, they are church wide. So church property is held in trust. This is why you have the trust clause. That is, the property must be held in such way that it will promote the interest of the denomination—the interest of Christianity through the denomination. Whenever a body of trustees, whether of a local church or school, orphanage or hospital shall disregard and ignore, or set aside those general interests and principles and purposes of the denomination, it is subject to the authorities of the church, even down to the Judicial Council, that may have the authority to revoke certain powers they have. In answer to the question, "Where would you say the ultimate ownership or beneficial interest is vested in the property held by the board of trustees?" I answer that I desire to avoid a civil question. The Board of Church Extension is a board of the church and incorporated under the laws of Kentucky. But it is established to assist the church in building churches, and when it ceases to perform that function then it will rest with the General Conference as to whether or not to discontinue the board

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or make any alteration in the constitution of that board. The corporations of the church, such as Board of Church Extension, Board of Missions, which owns considerable property, have no stockholders. Their governing bodies come from the General Conference. It elects the officers. Under the new church, the members of the boards are elected through the jurisdictions, each jurisdiction elects so many members, but the direction of the boards is through the General Conference. They cannot go out of existence as ecclesiastical bodies without the authority of the General Conference. What they can do civilly, I cannot answer. These corporations, like the Board of Missions, have no stockholders; they have no fund that has been raised as a separate fund, but raised by contributions from the church. Their board of directors, which we call boards, are all elected by the General Conference. It elects the general secretary who is the executive officer. The funds are collected from the church everywhere, by contributions, donations, etc. The disposal of the board—disbanding or ceasing it—is with the General Conference, the body that created it for the benefit of any interest that the General Conference may determine to which it may direct the proceeds of these funds. The matter is in the hands of the General Conference. The general members of the church have an interest in these funds but not a personal interest. It is a board for the establishment of Christianity and every member has an interest in these funds as he has in any local church. He has a denominational interest and a local interest. The difference between funds of that sort held by boards and the property, for instance, of an orphanage held by local trustees, or of a local church where the legal title would be fixed in trustees, is that the local trustees can dispose of their property but cannot estrange it. Bethel Church could sell property owned, and invest the proceeds in another church. It cannot sell its property and distribute its money to its individual members. The individual members have no personal interest in the property of the local church. It can only be sold in the way that is prescribed by the lawmaking body of the church. It is specified in the law that it can only be sold when it is no longer useful for church property or when they desire to move to a new locality, and sold only with the consent of the pastor and the Quarterly Conference.

Referring to page 109 of the *Manual of the Discipline*, under Section XII, the trust clause, as you all know, was placed there to preserve the connectional interest of the church—the whole church body or denomination. It was put in there in the course of time. The principle has preceded it as far back as 1796—coming from the General

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Conference—that all these things shall be preserved and be protected in such way as to preserve the connectional interest of the entire denomination. It is vested in the ministry which is a feature of the general connectional church. The rules and regulations of the Methodist Episcopal Church, South, for the management of the church property were made by the General Conference which, of course, is a representative body and is the legislative body of the church. It is a double question, necessarily, whether the control of church property is ecclesiastical or civil. The church owns the property, but it can be controlled under the state only by civil entities that are established by the authority of the church. That is, we have trustees that manage local church property but only under the authority of the Quarterly Conferences, and it can get its authority only from the General Conference. So there must be an ecclesiastical management as is expressed through the General Conference and on down; some through the Annual Conference, which has limited power as to the matter of holding property. There must be established some sort of legal entity by the state. We have established boards of trustees for our Annual Conferences, which are corporate bodies. We have a board of trustees for the entire denomination. That is a corporate body under the laws of Tennessee; but it can only hold property according to the will of the General Conference. The same thing goes down from the General Conference and Annual Conferences to the trustees. These are all legal entities under the ecclesiastical government of the church.

The general superintendency was originally in one bishop. It came into the hands of two bishops, and as the church grew there were more bishops. The church, South, had sixteen bishops with supervision of the Annual Conferences. They were given certain conferences which made up a district, but they continued to be general superintendents, as they were charged with the responsibility of the supervision of the temporal and spiritual interests of the church, and each bishop had that responsibility in all particulars. The same thing is true of the bishops of the entire church now, and there are fifty or more, some retired, some active; they still have responsibility for supervision of the temporal and spiritual interests of the entire church. They function as a whole through the Council of Bishops which meets once or twice a year, when they canvass every interest of the church, lay out the program for the entire denomination, advise and develop the movements that are to take place for the entire denomination. The Council of Bishops names all the commissions and various committees. Certain ones of them are for the

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committees, and all of whom, however, are eligible to be chosen. They have the responsibility of presiding over the General Conference. The bishops are elected by the Jurisdictional Conferences. We have six Jurisdictional Conferences, one a Negro, and five white. The General Conference specifies how many bishops each one of the jurisdictions may have. Each one of these jurisdictions can elect so many, but on his election, he is not a jurisdictional bishop, but a bishop and general superintendent of the whole church. He may be used in any part of the church. Under certain conditions in the Plan of Union, he may be in the South Central Jurisdiction and may be chosen to come over here. He has full episcopal powers as a general superintendent, and is only operating or functioning in the jurisdiction in order to bring about efficiency. One general superintendent was sent to South America, one to the Orient, one to northern Europe, one to southern Europe. They have this responsibility in connection with the episcopal district they are serving. Bishop Holt serves an important district. He is in charge in South America. These are general superintendents. We do have bishops—Central Conference bishops. They are not general superintendents. Their responsibility and their powers are limited entirely to the work of the Central Conference that elected them, and they may be members of the Council of Bishops, but they can only function there when the interests of the Central Conference shall be under discussion.

Bishop Pickett, in India, is a Central Conference superintendent, and Bishop Badley is a general superintendent. We have a general superintendent and a Central Conference superintendent. One is regional, but the general superintendent can even visit over there and direct the general interests of the church being taken care of by the Board of Missions. Bishop Arthur Moore now has work in this country and in the Orient. So far as the authority of the bishops is concerned as general superintendents, the Plan of Union has made no substantial change, except he presides over the conferences in his own jurisdiction and he cannot go outside of that, except, as he shall be invited out under special conditions; but he is not diocesan in any sense.

Union is a process rather than an act. It embraces many acts and members, and cannot be completed by an act. There could not be a union simply with the adoption of the Plan of Union, until the governmental structure was wrought out. So the Uniting Conference was created for the purpose of building the connectional structure—what you might call the constitutional structure. Somebody had to do it. The Uniting Conference was once spoken of as the “First

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General Conference," then thought of as the "Uniting General Conference," then the name dropped down to "Uniting Conference." It has the nature of a General Conference; it has the power of the General Conference to do the specified things indicated, which are to harmonize the existing rules and regulations, and then to provide for the unification of boards, connectional interests, and to make such provisions as would enable all of the elements to be brought together, and create a functioning body for all the elements of the church. It was required to make the laws for the new church, but it had to make them out of the laws of the three united churches. It could not go outside the content of the existing laws of these three churches. It might take one provision from any one, another provision from another, any provision from any one of the three. What its business was, was to harmonize, that is, to bring the law of the three churches into harmony to govern the new church in those cases where there was not complete harmony. When it came to creating boards, that is a corporation question as well to be handled by several bodies, and through the state. So provision had to be made for completing the action, and that was done by adopting Enabling Acts which continued the several boards to do certain things, but all under the authority of the Uniting Conference, which was a General Conference, up to that certain place. It could not make new provisions.

A General Conference is a lawmaking body. A Uniting Conference is a lawmaking body. The General Conference makes its laws out of memorials, petitions, and resolutions sent into it. It does not originate of itself. The Uniting Conference created its laws out of the material that was in the three *Disciplines*, and not out of resolutions from the outside. The Methodist Episcopal Church, South, has not gone out of business yet; it functions through The Methodist Church. The organizations, boards, conferences, and other divisions or organizations of the Methodist Episcopal Church, South, continue to function under the authority of the Uniting Conference and the Plan of Union—a provision that allowed Annual Conferences to do certain things.

Under an Enabling Act they were continued. Bishops, who were in charge of them, set the time they should meet; and they went on and got the reports on their business, closed the business of the old body, and finished their work and adjourned. That is the record I find as I read through the minutes. They did not do what is most important at an Annual Conference—make any appointments of the preachers. The preachers had responsibilities resting upon them through the year. They collected their money for the salaries of the bishops, secretaries and boards. They did all of that and closed that up. They had preachers

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who were in their courses of study, who finished their courses. They took no action that projected the work of the conference that was to be organized out of the elements of which they were a part.

The new Annual Conference boundaries were set by the Uniting Conference. The delegates of each jurisdiction met together and decided on the boundaries of its Annual Conferences, and brought back a report to the Uniting Conference. All the ministers within that defined territory became members of that Annual Conference. Laymen, as delegates to Annual Conferences of 1939, were governed by the same provision. They went into that territory and were elected for that conference. Many of them were elected both as delegates to the Annual Conferences of the Methodist Episcopal Church, South, and delegates to the Annual Conferences of The Methodist Church of that territory.

The plan for electing delegates to the Uniting Conference was that the Methodist Episcopal Church, South, was to have 400 delegates, the Methodist Episcopal Church, 400, the Methodist Protestant Church 100, and the General Conference of each of these churches would elect its delegates—the 900—in such way as it deemed and provided for the election. There were twenty-five members on the Commission of Church Union, five bishops, ten ministers, and ten laymen. The General Conference made these ten ministers and ten laymen delegates to the Uniting Conference. That is, there was to be an equal number of ministers and laymen elected by each Annual Conference, and these were to be elected as specified. For example, the Alabama, five lay and five clerical, as specified here as to the election by the Annual Conferences of these delegates. The Methodist Episcopal Church, South, since 1870, has been electing delegates to the General Conference according to the law which specified that the clerical delegates shall be elected by the clerical members of the Annual Conference, and the lay delegates by the lay members of the Annual Conference. That has been the way that our church has always elected because it is the law of the church. We have been having General Conferences that had great constitutional power, made the life of the church, and laws of the church since 1870, by delegates thus elected by the Annual Conferences. In this way, our Annual Conferences elected their delegates to the Uniting Conference, in the way they always have been elected to the General Conference, and that is in accordance with the resolution adopted by the General Conference, and it is in accordance with the law of the church by which the Annual Conference elects its delegates to the General Conference. The Annual Conference never elected its delegates in any other way since 1870. The laymen were just as much members; they were full members. It is a specified way of electing the members of a General

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Conference. The Uniting Conference was a General Conference. It could not be any other kind. It was a Uniting Conference set up by constitutional method, by the three General Conferences of the three churches. There never has been a more substantial body than the Uniting Conference. It was a legislative body which always the General Conference is. The legislative work of the church is done by it. The phrase "Elected by the Annual Conferences," means in the way always elected by the Annual Conferences. That law applies just as well to the election of these delegates as to the delegates to any General Conference.

We had before us a Plan of Union in 1918 and 1920 that was never submitted. That is, it was submitted without any recommendation. It went to the General Conference of the Methodist Episcopal Church. In that plan, this body we speak of here was called the "First General Conference." In Great Britain, when they united the churches there, they called their general body the "Uniting Conference." That is where the name first originated with us. We took the name "First" and crossed that out and made it "Uniting General Conference," and finally came down to "Uniting." That is the word for it. It is my firm belief that it was a General Conference.

I am familiar with the Articles of Religion as adopted by the Uniting Conference. The Articles of Religion, as they appear in the *Discipline* of The Methodist Church, are exactly as the Articles of Religion were, with the footnote and all, in the Methodist Episcopal Church, South. About that footnote—Article XXIII, as it appeared in all the *Disciplines*, provides that the President of the United States, Congress, etc. are the rulers of America. That Article of Religion appeared in the same way in all the *Disciplines*. We owe them proper allegiance.

The article was not sent over by Mr. Wesley among the articles adopted in 1784. The organizers of the church formulated this article of allegiance to the government, and placed it in the Articles of Religion after the Revolution. It pledges the membership of the Methodist Episcopal Church to loyalty to the government of the United States. In 1819 there was formed a local missionary society. In 1820 the matter came to the General Conference and they adopted that society, which was the beginning of the Board of Missions. Then it was that one man said we cannot go abroad in establishing missions with an Article of Religion that requires allegiance to the United States. Therefore this explanatory note was put under the Twenty-third Article, to explain that we mean loyalty to the government under which the church may function—any foreign country. That was put in in 1820.

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That note has remained unchanged in the Methodist Episcopal Church. In 1898 the matter of this explanatory note came before the General Conference of the Methodist Episcopal Church, South, and was referred to a committee of which Dr. Collins Denny was a member. He brought back the report that it was not a part of the constitution. It did not have constitutional standing, having been put in by the General Conference without being submitted to the Annual Conferences. In 1906, at the General Conference, some missionaries from Brazil and Japan asked that that explanatory note be so altered that it would become the substitute for the Twenty-third Article in our *Discipline*. So the General Conference formed a committee and the matter went to the committee. The committee then went on to say how you could change the constitution, but that to change an Article of Religion would require something different. The law of the *Discipline* said you can have a constitutional alteration of all the Restrictive Rules excepting the first, and stopped right there. The first is the one that covers the Articles of Religion. A constitutional alteration of all the Restrictive Rules, excepting the first, and stopped right there. A constitutional alteration could be made by a three-fourths vote of the members of all the Annual Conferences and a two-thirds vote of the General Conference. This provision stopped at the words "excepting the first." The committee recommended that the General Conference add the words, as in the *Discipline* of the Methodist Episcopal Church, South, up to 1938, that this could be changed by a majority vote of all the Annual Conferences. This committee asked that the General Conference to put those words into this constitutional provision upon the basis that they had been omitted by the editor, or in some way omitted. They had not been there since 1832. Before they submitted the matter of the footnote, they put that provision into the law. The General Conference submitted to the Annual Conferences the question as to whether or not they would change this explanatory note into the one proposed, making the one proposed constitutional. It was submitted to the Annual Conferences. By some little mistake, it was not adopted for four quadrenniums, but it went into the *Discipline* in 1922.

This explanatory note went into the *Discipline*, as it is in the Southern *Discipline* of 1934, and as in the *Discipline* of the united church. It has a double responsibility, one of the explanations, as far as the United States is concerned, and as a substitute, as far as the foreign field is concerned. In the foreign *Discipline* it would read, "Of the duty of Christians to the Civil Authority." In America, it reads, "The Rulers of the United States of America." That is in the *Discipline* of the united church.

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It was adopted by the method then considered to be the constitutional method. Whether it was the constitutional method, is the question submitted to the Judicial Council in 1938. The question arose whether the General Conference of 1906 had the power to put in those qualifying words that require the vote of each Annual Conference to amend the Articles of Religion. That question went to the Judicial Council, the supreme court of our church. It decided the insertion was not legally or constitutionally made—that it was null and void. In addition, the General Conference of 1938 struck it out. So it had not been properly inserted, according to the finding of the Judicial Council—never was a part of our law. It should never have gone into the *Discipline*. That is the question decided by the Judicial Council. The Methodist Episcopal Church, South, by the action of the General Conference, could not substitute that explanatory note for the explanatory note of 1820. In our church, the action completed in 1922 has constitutional validity. In the Methodist Episcopal Church, the action of 1820 was without constitutional authority and, consequently, it had no constitutional standing. That is according to the finding of the Judicial Council.

I think in 1870 the General Conference put upon the bishops the responsibility of arresting any legislation of any General Conference during its sitting—that the College of Bishops might declare constitutional or unconstitutional, and when they did that, they reported it back to the General Conference. This stopped the legislation, the General Conference acting alone. If the General Conference still thought the legislation should be enacted, they could repass it and send it to the Annual Conferences, and if they should give the three-fourths vote of all members, it became a law of the church. The bishops had the power to arrest. After the General Conference had closed, the bishops had no power to arrest any act of the General Conference. In 1930 the General Conference took the position that we should have a body in the church with the power of the Supreme Court to act upon any legislation during the General Conference or after the General Conference or even the acts of the boards, and provided the Judicial Council. We sometimes said the bishops had veto power. They did not. The Supreme Court never has a veto power. In 1930 the General Conference provided the framework for the Judicial Council to be composed of five ministers and four laymen. They passed the law by two-thirds vote, sent it down to the Annual Conferences, who adopted it and reported it back, and in 1934 the Judicial Council was the supreme court of the church, with the appellate power to arrest and act upon

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legislation that affected the constitution. The Judicial Council acted in the case I referred to a few minutes ago.

The difference in the power of the bishops and the power of the Judicial Council is that the bishops had only the power to arrest during the sitting of the General Conference. The Judicial Council has the right to pass upon any appeal, upon the plea of the constitution being involved. Sometimes the bishops acted upon their own motion. The General Conference could ask the bishops to pass upon a matter. So far as the Judicial Council is concerned, it could not act upon its own motion.

I do not know that there are any other matters that I would like to point out. I have spoken of the things brought up as to the church being a connectional interest. The church has agreed on this matter of union for years, and we have all done our utmost to bring that to pass. Its name and property and its ministers and its membership are as I have indicated, and that it had the power to unite as a body—a spiritual body—with other spiritual bodies, and we tried to carry out that purpose. That was made very manifest over the denomination. There were some who did not agree, who were not pleased with union. We have nothing to say about that. We believe that the Methodist Episcopal Church, South, as a whole has gone in as a particular constituent part of The Methodist Church. But it still functions and operates through the machinery set up, as before, without in any way limiting its actions or destroying its purposes.

CROSS-EXAMINATION

I am a bishop of The Methodist Church. I am a bishop of the Methodist Episcopal Church, South, so far as it exists. It exists only in The Methodist Church. The Methodist Episcopal Church, South, exercises its functions as a spiritual body through the organization of which it is a component part. It is not operating through conferences, except those established out of the elements composed previous to union. I am not a bishop of the Methodist Episcopal Church, South. There is no Methodist Episcopal Church, South, except as it exists in The Methodist Church, of which, of course, I am a bishop. The three churches function as one institution—The Methodist Church. The Methodist Episcopal Church, South, does not exist, as it existed prior to 1938, as a separate entity. It is a component part of The Methodist Church. It does not, and cannot exist, and no previous members of it can belong to that church. When two bodies merge, they function through the merged body. It is a new form of body but the objectives are the same. The mechanism of the new church embraces the mechanism of the three churches brought

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about by the United Conference. The objectives of various Protestant churches are different. They have entirely different modes. Many of them are attempting to carry out those objectives. The modes of The Methodist Church include and embrace and carry out the modes of the Methodist Episcopal Church, South. The General Conference of The Methodist Church is in no sense connected with the General Conference of the Methodist Episcopal Church, South, in the same way that two of our General Conferences were connected. It meets under that authority with those other two authorities brought in. The General Conference of the Methodist Episcopal Church, South, is not as it existed previous to 1938. If so, we would not have union. Union is a bringing into—uniting. The same organization as the Methodist Episcopal Church, South, prior to 1938, does not exist—not that same physical organization. A religious organization like The Methodist Church has a soul. It is more than a society. It is an organization with a soul, with a purpose and spirit, with a movement. It is not my conception that that same religious society, as it existed prior to 1938, now exists. It is in the process of going out of existence since it voted on union. The same functions are being carried on. It is acting pursuant to the orders of the Uniting Conference, and then of The Methodist Church. It is no longer directed by the Methodist Episcopal Church, South. It ceased to be governed by the Methodist Episcopal Church, South, when union came with the meeting of the Uniting Conference. When plans of building the structure had been completed, then the Uniting Conference declared that union was on. It simply announced the union. The Uniting Conference adjourned on May 10, 1939. Yes, it is my view that on May 10, 1939, they [the Methodist Episcopal Church, South] ceased to be governed by the regulations of the Southern church, and were thereafter governed by the actions of the Uniting Conference and by the actions of the General Conference of The Methodist Church. Yes, the efficacy of the actions of the General Conference of the Methodist Episcopal Church, South, and the control of the agencies of the Methodist Episcopal Church, South, ceased on May 10, 1939, just like your membership in that church ceased. The words at the bottom of page 297 of the *Journal* of 1938, "Pending the meeting of the Uniting Conference each of the three Churches shall be governed by the rules and regulations of its own Discipline," mean exactly what they say. The three churches continued as they had continued before—each subject to its own rules and regulations. Up until the Uniting Conference met, each church went on. But with the meeting of the Uniting Conference, no church was any longer governed by its own agencies. Our Board of Missions ceased to be governed by our church except so

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far as these regulations were continued through the Enabling Acts. The continuation of them was not the action of the Uniting Conference. This is union. We are uniting three churches. The Plan of Union; the date May 10—that was the day union was declared as effective. Union was voted by the General Conference, but it was voted subject always to the action of the Uniting Conference. The Uniting Conference met on April 26. The provision quoted above meant that those boards and agencies should go on under the regulations in the three churches until the Uniting Conference had created the framework by which they should go on. The only difference is fourteen or fifteen days. By May 10 they had become institutions of The Methodist Church, and consequently subject to the regulations that were enacted by The Methodist Church. Where there was a difference, the provisions adopted by the Uniting Conference governed. With the adoption of the plan, and after the Uniting Conference met, the Methodist Episcopal Church, South, ceased to exist as an independent entity. It existed as a part of the body created by the merged elements from the three churches. It is a merged part. I would think that constitutional amendments might be adopted by three fourths of the members of the several Annual Conferences and two thirds of the General Conference, and that applies to every type of constitutional amendment. The constitution of the Methodist Episcopal Church, South, could be amended by three fourths of the members of all the Annual Conferences and two thirds of the General Conference, either the General Conference meeting immediately thereafter or immediately preceding.

QUESTION: Suppose the General Conference of 1926 had initiated a constitutional amendment and it had gone to the Annual Conferences, and the Annual Conferences had not acted until 1932, when three quarters of the members acted favorably, would the constitution *have* been amended?

ANSWER: That has been discussed by the bishops. They have always varied on it. That is a matter I would not want to give a straight opinion on. I have had to pass on the decisions of law made by the bishops in the last twenty years. I had to arrange in a good way the constitution of the united church. I studied it. I would say that I have some knowledge of the law of the church, acquired through my researches through the law of the church. I would say that Bishop McTyeire was the outstanding church lawyer. Bishop Wilson was a church lawyer, but not in the same class with Bishop McTyeire. Bishop Tigert follows certain leads, though he followed in no small way Bishop McTyeire. Bishop Cannon has a good understanding of the church law. It has been recognized that he has given close personal attention to church law. I pre-

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sided over the Little Rock Conference in 1937. The *Journal* of that conference is not necessarily correct. The keeping of it is the business of the secretary; the conference passes on the minutes. The record in the *Journal* does not show the question on the adoption of union. It is in the record of the secretary himself. *Journals* do not carry the record. The papers are in the hands of the secretary of the conference. It was never contemplated or remotely considered that we should have union without a plan of union. The question whether union could have been adopted by the conference alone is an academic opinion. I guess you can use that adjective because no one ever voted on union until some plan of union could be considered, upon which union could be based. You could not carry forward without a plan and without governmental structure. It comes back to the action of 1844. The action was taken by the General Conference. But there was a certain sort of basis for that division, a certain sort of basis across the country. But it did not give a plan of a new church; that was worked out through a constitutional convention in 1845.

QUESTION: You testified, as I understood it, that no question had ever been submitted to the local congregations or to the membership at large, not even the Plan of Separation, but you did qualify that by saying votes were taken in the South. Were those votes taken pursuant to the plan of action adopted by the delegates from the South to the General Conference of 1844?

ANSWER: They were taken after the action of the delegates of 1844, but they did not in any way change the act of the General Conference of 1844. There could be no submission of any question that affected the separation to the local congregations of the South without submitting it to the local congregations of the North. If you are going to decide on the validity of the separation, of the actions taken, then it should be submitted to both sides.

QUESTION: The Plan of Separation left the question of division to the Annual Conferences in the slaveholding states, and the plan of action to which I refer, adopted by the Southern delegates to the General Conference of 1844, consisted of three things. I refer to the *History of the Organization of the Methodist Episcopal Church, South*, pages 146 and 147. The first resolution of the plan of action called a convention of delegates from the Southern Annual Conferences to be held in Louisville, Kentucky, May 1, 1845. Was it by the favorable action of that convention that the Methodist Episcopal Church, South, as a separate ecclesiastical organization, came into existence?

ANSWER: The convention did authorize the setup. The Plan of Separation simply said that the church would be separated along this line, if

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the Southern conferences desired it, and the convention expressed their desire to have it so.

QUESTION: Did any Southern conference adopt a resolution declaring we desire to divide the church, until the wishes of its general membership had been ascertained?

ANSWER: I could not say out of my memory, and I will not. It is my opinion, in the election of delegates, of course, they showed that they were in favor of the separation, and by the instructions they gave.

QUESTION: A second resolution of the plan of action of the delegates is not now of importance. The third reads as follows:

These several Annual Conferences shall instruct their delegates to the proposed Convention on the points on which action is contemplated—conforming their instructions, as far as possible, to the opinions and wishes of the membership within their several Conference bounds.

The facts stated in the *History* concerning that vote by the membership are stipulated by counsel. The *History* says through the whole of the South votes were taken and the people, in the ratio of ninety-five to five, expressed themselves favorably to the separation. Is it not your conception that our ecclesiastical ancestors in 1844 and 1845 said in effect: While the General Conference has left to the Annual Conferences in the South the power to divide the church, nevertheless, the Southern Annual Conferences should take the view that it would not be right for them to divide the church unless the people desire to divide it; and first, we will get an expression from the people and conform our action to that expression?

ANSWER: I could not say as to that. All I can say is that what they were doing was trying to get the mind of their people. They were not taking a legal action, not adopting the Plan of Separation. In carrying forward a vote of the members, they were trying to find out, in that way, the mind of the people as to what they really thought of the separation and the organization of the new church. The purpose was, of course, to get not merely an expression of approval but loyalty to your church. I do not think they would encourage separation if they did not know the temper of their own people. There has never been a vote of the local congregations for the establishment of a constitutional act.

QUESTION: Wasn't the vote of the local congregations taken in 1844 and 1845 for the purpose of getting an expression of opinion on the advisability of establishing a separate ecclesiastical connection?

ANSWER: They might express their opinion, but not determine it.

QUESTION: Did not our Annual Conferences say: We will not exer-

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cise this right which the General Conference gave to us unless the people approve?

ANSWER: They may have said it in effect, but they did not say it in fact.

QUESTION: In your opinion, did they say that in fact?

ANSWER: In my opinion, they had already made up their minds at the General Conference to create a Methodist Episcopal Church, South. In my opinion, what they wanted was the large support, mainly support of their constituents, for reinforcement of the large power of the church existing in the South. I don't think they had any right to expect that the church in this way would take a legal action.

QUESTION: In your opinion, the Louisville Convention did not need the support of this action by the membership?

ANSWER: I think they knew very well there would not be a contrary vote, before they asked them for it.

QUESTION: No effort was made in 1937 and 1938 to get an expression from the people on the question of unification?

ANSWER: Yes, processes have been going on for twenty years to find out what the people were thinking and desiring.

QUESTION: Of what did those processes consist?

ANSWER: General conversations and discussions of the union, privately and in various union meetings. You take in my own conferences. I had three votes in Arkansas, four in Missouri; only seven votes against the adoption of the Plan of Union. No one made any speeches one way or the other.

I do not know of the adoption of any cloture resolution. I do not know of any congregations to which I preached in 1937 where the matter of unification was publicly discussed. I made some four or five addresses, usually to bodies made up of preachers and laymen—conference bodies. It is only a small per cent of the membership of the church that attends District Conferences. I would say about one per cent. I have attended such conferences that had the house full, two or three hundred, five hundred, or a thousand.

We had before the church in 1924 and 1925, another plan of unification. There was no widespread discussion on that occasion in the church papers, on conference floors, and in general by the membership of the church and also in congregational meetings. In certain sections, especially in the old states of the South and other sections, there were some—but not so many as in the lower South. There was widespread discussion in the Baltimore Conference. There was a large number of published debates and addresses at congregational gatherings in the Virginia and North Carolina conferences and all over South Carolina.

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There was considerable discussion in the territory of the church east of the Mississippi, including Illinois. I recall that, in 1924 and 1925, some of the bishops attempted to get an agreement in the College of Bishops that the bishops would no longer discuss the matter and use their influence to keep down discussion. It is unfortunate that the bishops would be arrayed against each other. I do not recall that those of us who favored unification on that occasion discussed with [Bishop] Darlington the advisability of a gentleman's agreement to cease all discussion and use our influence to keep discussion down. When the plan of 1924 was defeated, I tried to wipe the thing from my mind. Many of the things which were in my mind at the time, I have thrown out of my mind. The plan which was defeated was a partnership plan that did not meet the response of the church that this completed plan of 1935 did meet. I mean, from the membership of the church of Kentucky, Arkansas, Texas, Tennessee. We don't need to take a straw vote or ballots to know the mind of the people. The plan of 1924 and 1925 received a majority vote in our church. I am not able to say what would have happened had there not been the discussion and objections against it in certain states of the South. What I do say is that the plan of 1935 is altogether different; it is complete. The men who said in 1924, "I am not opposed to union; I am opposed to the plan gotten up," said, "I have always been favorable to union; I am not opposed to this plan." It is the change in the plan that made a new response over the church, and lessened the discussion that was carried on throughout the church. The discussion in public meetings in the Western states was very small indeed. Some of the District Conferences, when they elected delegates to the Annual Conferences, instructed those delegates how they should vote, or elected men on the basis of their declared position. Some did and some did not. I never took the trouble to ascertain how the lay delegates to the Annual Conferences of 1925 voted.

QUESTION: Taking the church as a whole, a large majority of the lay delegates voted against unification?

ANSWER: That depends altogether on the section of the country where they voted. I never tried to find out as to the church as a whole.

QUESTION: Did we have in 1937 and 1938 any discussion by bishops and presiding elders of the church, and by church and press and ministers comparable to that which took place in 1924 and 1925?

ANSWER: It was not required of the church. The responsibility and the mind and law of the church was different from what it was in 1925. That discussion was not in vogue. I don't know whether bishops advised editors to keep the discussion down. That was not my part. Yes,

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I knew Dr. J. M. Rowland. He died very shortly after the General Conference of 1938.

QUESTION: Bishop, I show you a copy of the *Richmond Christian Advocate* of March 10, 1938, an editorial signed by "J. M. Rowland," entitled "Richmond Church Opposes Union," reading in part as follows:

Soon after the Joint Commission on Unification released the Plan, a meeting of our College of Bishops, at which all active Bishops were present, discussed the position the Bishops ought to take in the coming discussion in the public press. They decided the Bishops ought not to enter into the debate on this question in the press. This conclusion was reached because of the wide criticism that the Bishops received in 1925, when the press was filled with their discussion of this matter. The pages of this paper were crowded and several times we received wires asking for two or more pages reserved for the following week.

ANSWER: The matter was taken up by the College of Bishops in 1935, the meeting following the adoption of the plan by the commission. We did nothing. I think Bishop Mouzon spoke first. He said: "You know we bishops entered into this discussion in 1925. We had a good deal of dissension in the church. Would it be wise for us to enter into the debate on the merits of the plan?" The general opinion was that we should not participate. All our active bishops were for the plan.

QUESTION: Was Bishop Darlington for it?

ANSWER: Yes, sir, he said he was. He might not have thought it wise to have the union, but he went along with it. We simply discussed it. No vote was taken—just general expression. After that, your father wrote an article. I had written an article in explanation of the plan and then I wrote an article in answer to him, and then he wrote another. He answered me. His article, my answer, and his answer were on a question of a legal nature. We were not discussing the plan; we were discussing the constitutional procedure as it relates to the plan. Then later I did write another article of explanation of the plan, hoping it would be a simple explanation. There were no plans formed, there was no resolution made, no agreement entered into, that we were not entering into these discussions. It was a general discussion in the College of Bishops. What Dr. Rowland said there—"co-operate with their plans"—could mean a great deal more. "Suggestion" would be the better word. There was no plan at all. It was a matter of deep regret that we entered into the discussion in 1925.

QUESTION: As I understand it, it is your conception that we had in the Southern Methodist church three classes of members. One was the

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layman who held his membership in the church through the local congregation; the minister who held his membership through membership in the Annual Conference; and the last was the bishop whose membership was held neither in a local congregation nor conference?

ANSWER: Yes. The bishop was amenable to the General Conference.

QUESTION: The character of the privileges and duties of all three of those classes was different, of course?

ANSWER: In reality, as they acted, yes. But as far as their loyalty to Christ and the doctrines of the church and the fundamental and elemental things that make up the church, they were on the same basis.

QUESTION: Let's look at the difference in their rights. Let's take the publishing house, which is a corporation, the produce of which, or profits of which, could be appropriated by the General Conference only to the superannuated preachers and the widows and orphans of preachers. Our superannuated ministers, those widows and orphans, had an affirmative proprietary right in those profits?

ANSWER: They were beneficiaries. They had no proprietary rights, such as would give them control over the property. They had no proprietary rights, as I understand proprietary.

QUESTION: Do you not agree that when the book committee appropriated out of the profits of the house, as they did annually for many years, approximately some one hundred thousand dollars, that there was given to each superannuated preacher an individual legal right to his pro rata part of the appropriated profits?

ANSWER: You would have to explain a little more the meaning of "legal right."

MR. DENNY: Those questions are asked subject to the objections already stated. They may throw some light on the witness' views concerning church laws.

ANSWER: I want to answer in such way to do credit only to the things I believe.

QUESTION: The book committee appropriated \$100,000 to be divided up between the several Annual Conferences. In the South Carolina Annual Conference, there is a superannuated preacher. Under our procedure, the Annual Conference Board of Finance generally arranged for the matters affecting the superannuated preachers of that conference. Suppose the South Carolina Annual Conference Board of Finance declined to recommend, or the Annual Conference had declined to give, any portion of that profit of the publishing house, to the superannuated preacher in good standing. Do you not feel he had a legal right in his respective portion of that profit?

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ANSWER: I think he is entitled to his part of the profit under the plan by which the profits are distributed.

QUESTION: If he had brought a suit and you were to testify, would you testify that he had a legal right to his portion of it?

ANSWER: The publishing house business is to publish books that shall promote the church, and if there is a surplus which comes to the house, beyond that which is necessary to do the work that the publishing house has to do, that can be distributed only to the superannuated preachers of the church.

QUESTION: To all the superannuated preachers?

ANSWER: Yes, to all.

QUESTION: You would have to support that gentleman with your testimony.

ANSWER: That's so.

QUESTION: Does any other member of the church, outside of the superannuated preacher, and the widows and orphans of preachers, have the same right to the profits of the publishing house?

ANSWER: A preacher gets the right when he becomes a superannuated preacher.

The funds are not appropriated to the bishops; their funds are provided otherwise. They are paid out of General Conference funds. The Board of Finance, a Missouri corporation, has six and a quarter million dollars to general fund, three million to annual fund. Its purpose is to receive gifts, hold moneys, invest them, and attempt, with the income from these funds, to care for our superannuated preachers. It sends to each Annual Conference a certain amount to give to each of the superannuated preachers. They send so much to each preacher, according to the years of service he has had. The Board of Finance does not have the right to cut off a particular superannuated preacher from the enjoyment of that income if he meets the conditions, the conditions being that he is a superannuated preacher. Every preacher in the ministry is going to be a superannuated preacher, and every member of the church is interested in his pastor being properly cared for. The superannuated preacher is entitled to the personal enjoyment of the earnings of those funds, and the active preacher is entitled to look forward to the day when he is superannuated, and the funds will be there to take care of him. There is no possibility that a layman will acquire a personal interest in the sense that he may personally enjoy those funds, unless the law is changed by the General Conference.

It is a matter of opinion whether to change it in connection with the Board of Finance. The state of Missouri would have to seek an amendment of the charter. There are many instances in the Southern church

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in which one class of member has personal rights that another class does not have, similar to these two instances. A traveling minister is subject to appointment anywhere and can be transferred from an Annual Conference to another without his consent. We have never transferred a preacher from one Annual Conference to another in recent years without the consent of the bishop in charge of the conference to which he is transferred, but it has been done several times in my career. I rather think that if I were bishop of the South Carolina Conference, I could transfer a man to the Upper South Carolina Conference without the consent of the bishop of that conference, though in reality nothing of that kind has taken place for many years. There is an agreement among the bishops that such a thing shall not take place. A lay member in good standing has the right to demand a certificate from the pastor of the congregation in which he holds his membership, that he is a member in good standing. And it is the duty of the pastor to give him such a certificate if he indicates that he is going to join another church. He takes the letter to the other church. I rather think the pastor of the other church has the right to refuse to receive him as a member of the congregation, but I cannot point out any provision of our law in which that right is given. Yes, I have examined the *Manual of the Discipline* with more or less care. Some things I did not agree with, and do not now. The fact that the committee reported to the College of Bishops the draft of the *Manual of the Discipline* doesn't mean that they endorsed every statement in it. The College of Bishops approved it on the report of the committee, but in approving, that doesn't mean to say that each bishop accepted all statements as their own interpretation of the law. It meant simply that it should be published and go to the church.

QUESTION: I read to you from page 121 of the *Manual*, beginning at the bottom, paragraph No. 3:

It is not optional with a preacher in charge of one charge within this Church, to determine whether he will receive the certificate of a member residing within his limits, duly drawn up and signed by the pastor of another charge. The Church is one, and the certificate must be honored wherever presented. If it be known that the person presenting the certificate has been guilty of immorality or crime, it would be no bar. The certificate should be received, and the person should be, in due form, put upon his trial.

I read you a footnote found at the bottom of page 122, as follows:

"It is not optional with the preacher whether he receive a certificate from a member residing within the limits of his charge. If the certificate is drawn up in full form, and signed by the constituted authority, it must be honored."

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This principle, inherent in the law and established by the custom of our church from the beginning, was specifically set forth in a decision of the General Conference of the M. E. Church in 1860:

Is a preacher in charge obliged to receive a properly authenticated certificate of a member when he is aware such reception would disturb the peace and quiet of the Church? Answer. It is the duty of the preacher to receive all certificates.

ANSWER: I don't agree with these men, whether Merrill, Baker, or Denny. A pastor of a church is responsible for his congregation. To deny admission to his congregation of one who would bring dissension, is a part of his business to preserve and promote the body of Christ delivered to him. You hold your membership from the congregation from which a letter is taken. You hold your membership in the pastor's congregation. It is the business of the pastor to be the shepherd of his flock. I cannot refer to any decision, book written by any student of Methodist law—Bishop McTyeire or any other—who takes that position, but that does not break down my position. Yes, I know of a property fund now held by The Methodist Church—the Bethel Church, in Charleston, and the Monumental Church, Richmond. The civil ownership is held by trustees, but the ecclesiastical ownership is in The Methodist Church. That spiritual ownership cannot be violated by any agents appointed by that church to function under civil law. The Methodist Church is not a corporate entity and never desired to be such. It operates always through separate organizations, boards of trustees of various kinds and forms. But the church itself stands behind them all. The board of trustees could not be appointed if it were not for The Methodist Church, except through conferences. They themselves are not the church, which is something up and above and beyond any civil arrangement by which the interests of the church are to be preserved, defended, and promoted. The Methodist Church is responsible for any injury caused in a local church, but it must be cured through the congregational organization of The Methodist Church. Supposing that the Washington Street Church has no funds but there are millions of dollars in the funds of the Methodist Episcopal Church, South, and a person is injured in that church. The injured person could not recover out of those funds because those funds are under corporate boards of trustees to be preserved in their hands. A man injured in the Washington Street Church is limited in his recovery for his injury to the property, or whatever is owned by the Washington Street Church. The whole church does not get any of the benefits. The benefits to which the whole church is entitled are the spiritual benefits and the great work

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and purpose that Methodism has. It is a spiritual movement. When churches borrow money and place mortgages on property, the whole Methodist Episcopal Church, South, is not legally responsible for those debts because the properties are held by boards of trustees. The Methodist Episcopal Church, South, is not a corporate entity. We try to see that a congregation does not go beyond its ability to meet the obligation it makes in the name of the church. We have had a number of churches which went into debt beyond their ability, to the embarrassment of the Methodist Church. The members of the church have no liability. The congregation is a beneficiary of the trust which individual trustees hold title to congregational property, that is, the members of the church congregation. They have a pastor every Sunday, a school for their children, and a way of expressing themselves. The general church at large, that is, the whole spiritual body, is a beneficiary of that trust.

QUESTION: I am not a member of St. John's Church in St. Louis, and yet, even though I present my letter of transfer to that church, a single man can prevent me from enjoying my interest in that trust?

ANSWER: A man stands there for the particular business of preserving and protecting and promoting the church through that organization, and if you come there, or any man whom the pastor believes would be a detriment and would bring dissension and disruption, it is his business not to take you into that organization. My conception of your right as a beneficiary in that piece of property is that you can go to church. I think you could affiliate with the church, but a pastor has the power to prevent a man coming into a church who he thinks would disrupt, even though he has a certificate. In a quiet neighborhood, a man, whether he be a member of our church or no church, has that same right to attend a service in that church. St. John's Church is your own church family. You are not, as a beneficiary, responsible for the debts created by that congregation. If the Washington Street Church, Columbia, creates debts, the members of that church are not responsible for those debts. In some parts of the East, I have heard that liability did exist. I have not known of it personally anywhere. Yes, our Board of Church Extension makes loans on the security of a deed of trust or mortgage to various congregations for the purpose of building their churches, and in a few cases I think they have foreclosed.

As far as I know, the civil courts have always followed the ecclesiastical in management and conduct. All these great funds, including the congregational funds and congregational properties, are connectional in the way already described. A partnership cannot owe money to itself, but a local congregation can owe money to the church. There are two corporations under the laws of the state, functioning in the

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interest of Methodism in two capacities, and under the laws of the state two entities, but under the church looking forward to the same common end. I take your word for the statement that the individual rights of people in property, that is, their proprietary rights are determined by civil law. Under the state law, the church has to operate through state functions but, at the same time, the Methodist Episcopal Church, South, as an ecclesiastical body, has certain rights that it can always exercise and carry forward and protect and defend, and it will do it.

As an active bishop in charge of conferences west of the Mississippi River, I had an interest in the Washington Street Church in Columbia, South Carolina, because it is part of the church which pays my salary. I have as much right in it as any other church property. I cannot withdraw money from it. My rights are ecclesiastical rights. I have no civil rights, so far as ownership. Civil rights protect ecclesiastical rights. If a man were to try to take that church by a lawsuit of some kind, why, then he would be trying to deprive me of my ecclesiastical rights. I have the same ecclesiastical rights as in all—the promotion of the program of Methodism. You cannot have a pastor without a house. Unless you have a place to worship, you cannot have a congregation. I have the same civil and ecclesiastical right in that as in all churches. I cannot define it.

I was a member of the General Conference of 1906.

QUESTION: It is in evidence here, found on page 67 of defendant's Exhibit A, that a certain resolution was adopted, 217 ayes to 1 negative vote. On page 70 of the same exhibit, that after reconsideration, that resolution was readopted by 220 to 7. The report that the General Conference of 1906 was voting on, was a report of a special committee on the Twenty-third Article of Religion, which begins on page 65 of Exhibit A, and that report set forth that under the constitution of the Methodist Episcopal Church, South, as it existed in 1906, the Articles of Religion of the church could be amended only on the recommendation of each Annual Conference. Was yours one of the negative votes?

ANSWER: No, I never knew what was in that resolution. I never paid any attention to it. I followed Bishop Denny. I believed he knew what he was talking about. Since then, I decided he didn't know. On that point I think he was grossly mistaken and in great error. I was elected a bishop in 1918. I never looked into the matter until since 1935.

QUESTION: Were you a member of the General Conference of 1910?

ANSWER: I was not.

QUESTION: Were you a member of the General Conference of 1918?

ANSWER: Yes, sir.

QUESTION: On page 81 of defendant's Exhibit A, there appears a re-

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port number two of the committee on revisals which was adopted 241 to nothing. That report sets forth that the General Conference of 1914 had failed to act on the recommendation of each Annual Conference, that it altered our Articles of Religion, and recommends that the matter be again submitted to the Annual Conferences so that the Twenty-third Article might be amended. You, I suppose, were one of the affirmative voters?

ANSWER: It may have taken place after I was elected bishop, but if it took place before, I voted for it.

QUESTION: You understand, by these questions I mean not the slightest disrespect. You testified that on two occasions, and in connection with the Articles of Religion, you voted on those matters without paying any attention to the content. Was that a practice of yours?

ANSWER: It was a practice at that time. I followed Bishop Denny. I believed in him. I didn't look up a single book. He said it was true. I believed in his knowledge.

QUESTION: You are familiar with the fact that the report in 1906 went in detail into the history in the matter, and covered the actions of the various Annual Conferences of the church between 1828 and 1832, and that of the General Conference of 1832?

ANSWER: The report was not only the conclusions of the committee, but covered the facts on which the committee relied. I am now familiar with it. I don't remember reading it, if it ever came before the General Conference.

QUESTION: You are also familiar with the fact that in 1918, and as is shown on pages 14 to 16 of defendant's Exhibit A, that the College of Bishops declared an attempted alteration of the Apostles' Creed by the General Conference to be void, and declared it would have to receive Annual Conference approval.

ANSWER: I remember such a bill did go up.

QUESTION: At that time, and indeed, I think it was from 1866 to 1870, the College of Bishops had been the supreme judiciary of the church, had it not?

ANSWER: Under certain limitations.

QUESTION: It did not have any power to review the actions of, or discipline, a member or preacher?

ANSWER: It had the power to arrest legislation which it considered was unconstitutional.

QUESTION: It had the power of reviewing and passing on the constitutionality of actions of the General Conference?

ANSWER: That is correct.

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QUESTION: It was the final judiciary on all matters save punitive matters?

ANSWER: Yes, sir.

QUESTION: You were a member of the College of Bishops of 1922. I take it you have carefully studied each of the Episcopal Addresses you have signed during your term of office?

ANSWER: Yes, I have signed them all. They are addresses, they are not official documents in that they give special legal opinions. They are simply addresses.

QUESTION: Isn't it a fact that ever since you have been a member of the College of Bishops, the practice has been for the bishops, months prior to the delivery of the address, to assign to one bishop the drafting of the address?

ANSWER: Yes, sir. Two or three months or six weeks ahead of the meeting of the General Conference, a copy is sent to each bishop for study, for review, and the bishops then hold a special meeting of the College of Bishops, sometimes lasting two or three days, discussing and revising that address and bringing it into final form.

QUESTION: Prior to 1938, did each bishop attach his signature to the address?

ANSWER: He did. But that doesn't mean he endorsed everything in it. I think all of them signed what I wrote but your father didn't sign it. He didn't endorse everything I wrote.

QUESTION: Don't you understand if a man signs a paper he approves it?

ANSWER: Not an address. I have just signed an address to the General Conference at Atlantic City. There was much in there I didn't endorse. It was an address written by Bishop McConnell.

QUESTION: Is it not understood that if you sign a paper, report, or address, it does express your views?

ANSWER: No. No bishop I know endorses everything put down.

QUESTION: I refer to page 20 of defendant's Exhibit A, which is an excerpt from the Episcopal Address of 1922, and which deals with the vote on the Annual Conferences on the proposed change in the Apostles' Creed. In that, the bishops said:

The question submitted related to our "standards of doctrine," and our constitution requires the concurrence of each Annual Conference with the General Conference to change any part of those standards. The proposed change failed of adoption. The following Annual Conferences voted against the change . . .

I also refer to Exhibit A, page 83—another excerpt from that address—

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wherein you dealt with the proposed change in the Twenty-third Article of Religion, reading in part as follows:

By the law . . . the change requires "the joint recommendation of all the Annual Conferences" and "two-thirds of the General Conference succeeding." Each of the several Annual Conferences has given a majority vote in favor of the proposed change. . . . To complete the action it is necessary that this General Conference by a majority of two-thirds shall concur.

You signed that address?

ANSWER: I signed it.

QUESTION: I know it. Did you believe it?

ANSWER: I accepted it. The Judicial Council, the final body, declared that that law which went in, in 1906, was not constitutionally put in. Consequently, it was null and void, and no action could be taken under it—had under the law—that's dead.

QUESTION: Did you believe, in 1922, what you then officially signed?

ANSWER: I just acted.

QUESTION: Somebody else told you that was correct and you rubber-stamped your signature to it?

ANSWER: That's all I have to say.

QUESTION: Have you carefully considered the questions that have come before the College of Bishops?

ANSWER: The College of Bishops never for one minute discussed it. The committee brought the matter in, and it was submitted to us, and we voted on the matter. The question of the constitutionality of that action in 1906 was not raised.

QUESTION: Did you not say at a meeting of the College of Bishops in 1937, when this address of 1922 was referred to by Bishop Denny, that you had simply put your name to that address as though it were a rubber stamp?

ANSWER: I don't remember; but that is the truth. I accepted that as fact. I did investigate it later, and I found out I acted improperly and illegally in doing that sort of thing. That act of 1906 should have been null and void.

QUESTION: You know the matter of the Twenty-third Article of Religion was before the General Conferences of 1906, 1910, 1914, 1918, 1922; that the matter of the change of creed was before the General Conferences of 1918 and 1922; and that on two occasions the matter of the change in the Twenty-third Article of Religion was before every Annual Conference; and that on one occasion the matter of the change of creed was before every Annual Conference; and that in each of these years I have mentioned, either or both of

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these matters was before the College of Bishops. Do you know of any other constitutional matter in the whole history of the church that has received such detailed attention by so many different bodies?

ANSWER: No. It is not a question of the Articles of Religion. It is a question of the explanatory note of loyalty to the government. The reason it was not passed on immediately was because there was little interest in it. It had nothing to do with the Creed, however, only with substituting one explanation for another, and the explanation that was in, was the same as was put in, in content. There was a little change in the form. The one of 1820 and 1906 were the same in content and meaning. Nobody thought very much about it. It is a matter of no particular significance. It is not an Article of Religion now.

QUESTION: You mean to state in evidence that the Twenty-third Article of Religion, adopted by the General Conference of 1784 and amended by that of 1804, is not an Article of Religion?

ANSWER: I said it was a matter of loyalty to the government.

QUESTION: The Supreme General Conferences of 1784 and 1804 declared it was an Article of Religion.

ANSWER: In order that they might commit the new church to the purpose of government.

QUESTION: Didn't they adopt it as an Article of Religion?

ANSWER: That didn't make it an Article of Religion. It depends upon its content.

QUESTION: Can you point to any action of any conference that the church has held, or to any writing that says that any of the Articles of Religion, any one of them published in 1938 or prior, is not an Article of Religion?

ANSWER: I know nothing of those things. I have judgment; I have intelligence. I know there is a difference in the Articles of Religion—the whole twenty-three.

QUESTION: You regard some as being Articles of Religion, others as not being Articles of Religion?

ANSWER: Yes.

QUESTION: The same power adopted them?

ANSWER: Yes, but that does not put in the content. Any sort of statement does not make it an Article of Religion.

QUESTION: Your view is that only certain types of substance may be incorporated in an Article of Religion, and that the church is powerless to adopt as an Article of Religion any statement unless it deals with substance of the required type?

ANSWER: I will accept that.

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QUESTION: But the church has demonstrated by its action in adopting all the Articles of Religion, and it has taken the view that each is an article and the same vote is required to adopt each of them?

ANSWER: Yes. The vote is the constitutional vote of the church the same as to change any other constitutional matter in the church.

QUESTION: Am I correct in the statement that, in your opinion, the constitution of the Southern Methodist church has never been reduced to writing; that in addition to certain actions of the General Conference of 1808, which are constitutional matter, all matters adopted by the constitutional process are constitutional matters, and that there are, in addition to that, other matters which, from their inherent nature, are part of the constitution of the church?

ANSWER: Of course. There are rules which were formed and adopted in 1808 and the acts of that conference in setting up the established government of the church.

QUESTION: Did you regard the veto power of the bishops as part of the constitution of the church?

ANSWER: Yes, sir.

QUESTION: There was nothing in the restrictive rules which would have permitted the General Conference from vesting that power in the bishops?

ANSWER: No.

QUESTION: You, of course, understand that the constitution of the church is much broader than the Restrictive Rules.

ANSWER: Yes, sir.

QUESTION: There are limits to the powers of the General Conference not contained in the Restrictive Rules?

ANSWER: Yes, sir.

QUESTION: Do you think the College of Bishops was correct, when in 1910, it decided that the General Conference had no right to change the name of the church?

ANSWER: I agreed with them.

QUESTION: You, of course, remember that William A. Smith, of Virginia, introduced a resolution in the General Conference of 1854, conferring the veto power on the bishops, and it was adopted. Smith returned to the General Conference of 1866 and stated that, in his opinion, the General Conference of 1854 had no power to deal with the matter, but that it would be adopted only by three quarters of the members of the Annual Conferences and two thirds General Conference vote. Do you think he was correct?

ANSWER: I think he was correct.

QUESTION: We come by the matter of lay representation in the

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Annual and General Conferences. That matter was adopted by the General Conference and submitted to the Annual Conferences upon the theory it required the approval of three fourths of the members of the Annual Conferences.

ANSWER: It took the constitutional act of the members of the Annual Conferences to deliver part of the power that was in the traveling ministry over to the laity. Since the organization of the church, that power has been the body of ministers. Their power could not be transferred by the General Conference. It had to be submitted to all the ministry, because all had created the church in the beginning and now the laymen were being brought in.

It was not that the North took the position that the General Conference was limited only by the Restrictive Rules, that the church was divided in 1844-1845. It was divided in 1844 over the question of slavery, and those matters were secondary. In 1844 it was the express view of the Southern delegates that the General Conference had no right to discipline a bishop without preferring charges and a trial. The Northern delegates claimed the General Conference did have that right but that is not the thing that divided the church. The thing that divided it was slavery.

I mean to say that the property of individual congregations could be conveyed only by, and in pursuance to, action of the Quarterly Conference, with the consent of the preacher in charge. That is the law of the church, and the civil law should not recognize a deed or conveyance that was procured in violation of the ecclesiastical provision. I cannot deny the right of the state to determine the ownership and devolution of property. I accept your statement that, under the state law of Virginia, the property of no congregation can be sold by the trustees, save on the approval of the congregation and pursuant to court order; and no congregational property can be sold by trustees without the approval of the congregation and without such an order, the ecclesiastical law notwithstanding. I knew you had a civil law something of that kind. I must recognize the power of the state wherever it is exercised. I have no alternative. I stated that the qualifications, duties, obligations, privileges of lay members in our church were fixed by the General Conference, and I mean The Methodist Church and the Southern church.

Wherever a General Conference took an action that involved doctrine it got into the realm of the constitution, and then the matter went to the Annual Conferences, where the church bodies act upon it—whether they will accept it. If the action was hostile to private ownership of property, I would not recognize the right

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of the General Conference, because the General Conference acts on doctrinal matters. The General Conference cannot prescribe to me what party I shall follow, nor social creed I shall accept. I just had a case in Atlantic City. They made a certain pronouncement concerning peace and war. I took the position that the General Conference could not prescribe to eight million people what they should accept. The General Conference did not prescribe a belief in that creed, and the General Conference in The Methodist Church could not have done so. They adopted a social creed but that is expressional. They could not have made adherence to that creed a test of church membership, as they made an adherence to the doctrine of the Trinity. As to the right of the General Conference to fix the conditions, privileges, and duties of church membership, the fundamental principle upon which the church is organized will determine the realm in which the church can act. The church must act in the realm of the church to be authoritative.

QUESTION: Is not an article declaring adherence to the principle of patriotism to be a Christian duty within the realm of the church?

ANSWER: I think they had the right to adopt an expression that is a statement of its loyalty, but not as an Article of Religion, the same as a belief in the Trinity. The Restrictive Rule which says that the General Conference cannot "do away episcopacy, or destroy the plan of our itinerant general superintendency" may have then meant the right and power of the bishops to preside over the Annual Conferences and to make the appointments of the preachers and presiding elders to their fields of labor, but that is not all it means now. That was in the hands of Bishop Asbury. We had another bishop—Coke—but he was usually absent. During the periods of his absences, he had the potential power. Bishop Asbury exercised the power during the whole of his life as bishop. In the old church and in the Southern church, a bishop had the power and the right to exercise every function of his office throughout the whole breadth of the church under the system then in effect. The active efforts of a bishop were confined to certain conferences. The College of Bishops divided up the work to make it possible to carry it on. Under the present system, if the bishop appointed to preside in a certain conference is taken suddenly sick and is unable to send a request to another bishop to preside in his stead, in order for another bishop to preside—under the understanding among the bishops—he would have to secure the approval of the committee on assignments, save in an emergency.

The bishops never had any legislative power. They were the super-

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intendents of the church. He was not responsible to the College of Bishops for his administration; he is responsible to the General Conference. I would not have done what you suggested a moment ago, that is, hold another bishop's conference without invitation or assignment. Bishop Keener did it. He did a great deal that I would not do. Each bishop has the right to hold conferences, but we have an arrangement among ourselves by which the college, as a whole, makes up the districts of the superintendents. We have our own rules by which we act in taking care of emergencies. For a long time the matter was in the hands of the senior bishop, and he could appoint a man to go. The function of the bishop covered the breadth of the church, here and abroad. In case of emergency, the Council of Bishops does exactly what the Southern College of Bishops did.

QUESTION: I note that in the Plan of Union, page 295 of the *Journal* of 1938, Article V, it is stated:

The Bishops shall have residential and presidential supervision in the Jurisdictional Conferences in which they are elected. A Bishop may be transferred from one Jurisdiction to another Jurisdiction for presidential and residential supervision by the Council of Bishops, when such transfer is requested by the Jurisdictional Conference to which such proposed transfer is made.

I ask you whether the council could transfer Bishop Watkins to the South Central Jurisdiction without the request of that Jurisdictional Conference?

ANSWER: It could not.

QUESTION: They could, however, by virtue of the next provision, transfer him there for a year, provided a majority of the bishops in the jurisdiction to which he was being transferred for a year approved thereof?

ANSWER: Yes, and in case of an emergency in any jurisdiction, through the death or disability of its bishops, the Council of Bishops may assign one or more of its bishops without the consent of the majority of the bishops of that jurisdiction. The emergency pursuant to which the council may act is confined to the emergency of the death or disability. It is an emergency, and a bishop in an emergency can be used anywhere in the church.

QUESTION: Suppose all the bishops, except one, died or were disabled, and that one should decline to approve the temporary transfer of other bishops to that jurisdiction. Would the Council of Bishops have power to assign other bishops to that jurisdiction, if the one bishop of that jurisdiction declined to consent?

ANSWER: In the first place, in case there is only one man left, there

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would have to be called an immediate session of the conference to provide bishops.

It is provided in the *Discipline* who has the authority to call such a conference. We have many things in the *Discipline* which are not in the Plan of Union. We have provided for the calling of the General Conference, and the calling of the Jurisdictional Conferences by legislation. The statutes no longer relate to one alone. The General Conference adopted that legislation. The statutory structure is not in the Plan of Union.

The committee of 1918 reported that the footnote to the Twenty-third Article of Religion put in in 1820 was put in by the General Conference alone. I certainly do agree with the statement of that committee in its report that "Article 23 has a footnote appended. This footnote, which was adopted by the General Conference of 1820 (see Journal, pages 214, 215), is not a part of our Articles of Religion . . ." the article which governs churches except in our own land was finally adopted by our church in 1922. The alteration of the Twenty-third Article is in reality only an explanatory note which we adopted in 1922. It was adopted in 1906 by the action of the General Conference. It was not adopted by constitutional method because we had none. We had no constitutional method under which this explanatory note was adopted in 1922. That law was declared null and void, and the action under it worthless. The act of the conference in 1906, which adopted that expression for the expression previously in, had no more power than that which existed in the 1820 explanatory note. The Protestant Church did not adopt that 1922 article. It is an explanatory note. The Uniting Conference of 1939 did not say it was an Article of Religion. It did adopt one form of language for churches in this country and another for churches abroad as a Twenty-third Article of Religion. The Uniting Conference had the power of accepting one of these footnotes, even though the one adopted was not historic nor held in common. When it came to harmonizing, we took the one preferred. The Uniting Conference could do nothing contrary to the Plan of Union. These footnotes are not historical articles. The Uniting Conference proceeded to declare that the action of our church in 1922 should be the footnote to the Article of Religion of the new church.

A General Conference of the Southern church had lay members elected by the lay delegates of each Annual Conference and clerical members elected by the clerical delegates of each Annual Conference. These persons, so elected and meeting at the required time, were possessed of full power to make all rules and regulations for the

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church, save only as prohibited by the church constitution. The Uniting Conference had the power to make rules and regulations for The Methodist Church out of the material that was in the three churches. Its power was not limited; its range was limited to the range of the laws that existed in the three churches. It made laws for the new church out of these. The Uniting Conference would not have had the power to set up a general church board of a type unknown either to the Southern, Northern, or Protestant church, because it was limited to using the material in the three churches. It did not have the power of the three churches to make all rules and regulations, save those protected by constitutional matter, because its power was not so extensive. Still it was a General Conference.

The membership of the Annual Conferences of the Methodist Episcopal Church, South, consisted of the ministers admitted into the Annual Conference, and one lay representative for so many members from the districts. The ministers alone nor the lay delegates alone, are not the Annual Conference. It has always been provided that the ministers shall elect ministerial delegates and the laymen shall elect lay delegates to the General Conference. It was the established law of the church that used that process in electing delegates to the Uniting Conference. That is the historical method of electing members by an Annual Conference to a General Conference. There is no other way of electing delegates. The delegates to the Uniting Conference were elected by the Annual Conferences. I do not know any instance where delegates to the Uniting Conference were voted for by ministers and laymen; it would have been contrary to law. Perhaps it is an alternative way of stating the same thing, that the same method of voting is prescribed by a provision that the delegates shall be elected by the Annual Conferences, and by a provision that ministerial delegates shall be elected by ministerial members and lay delegates by lay members.

EXAMINATION BY THE REFEREE

THE REFEREE: The 1934 *Discipline* is in evidence. It contains Article XXIII and what you called the explanatory footnote. Has there been any change, either in the Restrictive Rules or in these Articles of Religion, by any action of the General Conference since 1934? Or in this part on page 33, "which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding"?

BISHOP MOORE: The Judicial Council declared it was null and void. The Annual Conferences never approved it. The General

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Conference of 1938 struck it out because it was not constitutionally inserted. It was put in in 1906 without the action of the Annual Conferences. It was declared by the Judicial Council to be null and void and the General Conference of 1938 struck it out.

THE REFEREE: You read in your testimony, from pages 112 and 113, *Manual of the Discipline*:

In the above plan of settlement (set forth in the Journal of 1796) we have given the trustees an authority and security they never possessed by virtue of our former deeds—namely, the power of mortgaging or selling the premises in the cases and manner above mentioned. By which we manifest to the whole world, that the property of the preaching houses will not be invested in the General Conference.

As I understand, at that time there was no such thing as lay representation in the Annual or General Conferences.

THE WITNESS: There was none before 1870.

THE REFEREE: What is your construction of that clause?

THE WITNESS: It says here [The witness examines the *Manual*.] They could sell the property. The Methodist Episcopal Church could sell the property. It goes further and makes certain limitations upon the power to sell the property, but they cannot destroy the property.

MR. GRAYDON: Has that particular thing ever been amended, altered, or changed?

WITNESS: Of course, the trust clause itself.

MR. GRAYDON: I asked you whether that particular declaration has ever been changed by any Annual or General Conference?

THE WITNESS: It has not been changed.

THE REFEREE: What is your construction of that clause, if you have one: "By which we manifest to the whole world, that the property of the preaching houses will not be invested in the General Conference"?

THE WITNESS: The pastor must have a right in the churches.

THE REFEREE: I was trying to reconcile your testimony.

THE WITNESS: The construction is merely this: They gave this power to mortgage and sell properties to the trustees, but withheld the power to estrange it.

THE REFEREE: What power did they have over that property at that time? What rights did they have in that property?

THE WITNESS: They had rights, of course. From the beginning when the power was given to the trustees to sell, the power was reserved to the General Conference to say whether this property could be estranged.

XI

BRIEF OF THE TESTIMONY OF BISHOP CLARE PURCELL

[Sworn for the Plaintiffs]

I AM A BISHOP OF THE METHODIST CHURCH. I WAS ELECTED AT THE June Conference in 1938, and was in charge of the South Carolina Conference from 1938 to 1940. South Carolina is divided into two conferences, the Upper and Lower South Carolina Conferences. When I went to this area embracing those two South Carolina Conferences, I had no information for the first several months of what the situation was with reference to the Turbeville-Olanta Circuit—almost a year, I should say. But just after the Uniting Conference, I received several communications, one of which, I believe, contained two hundred or more names, stating they would not go into the united church. Rev. L. D. B. Williams was at that time pastor of that church, to which, I think, he was assigned in the fall of 1938, and he is still there.

My impression is that among the communications received, one came from that church. There were about twenty-five churches represented in the correspondence. I cannot be positive about the date, but I think it was in the summer of 1939, after the Uniting Conference. The Pine Grove Church is one of the churches in the Turbeville-Olanta Circuit. The communication attached to my affidavit in this case was addressed to me and Dr. Derrick and Rev. L. D. B. Williams and came through the mail. C. C. Derrick was and is district superintendent of the Kingtree district. L. D. B. Williams was and is pastor of the Turbeville-Olanta charge. "District superintendent" is what is usually called in The Methodist Church a "presiding elder," the functions of the two offices being practically identical.

I had a conference with the presiding elder and the pastor about the situation of the Turbeville-Olanta Circuit. I do not think I talked with any of the members about it. I was appointed to that district in 1938 and also in 1939, and had charges of both conferences for two years. I was in charge of those two conferences from May, 1938 to May, 1940, and was succeeded by Bishop W. T. Watkins.

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ON CROSS-EXAMINATION ¹

I cannot say that I received the statement in plaintiffs' Exhibit No. 10 filed with the deposition of C. C. Derrick and Rev. L. D. B. Williams, purporting to be a copy of a letter sent me in November, 1938, informing me that they would not become members of the unified church and would make their own arrangements for a pastor. I received a great many communications about that and other matters. In all probability, I did receive it; but I do not recall it. There was never any discussion during the session of the first conference between me and my cabinet regarding the Turbeville-Olanta charge and whether I would assign a preacher to that circuit, but it was my duty and I did it.

I have read the opinion of the Judicial Council of the Methodist Episcopal Church, South, at the General Conference of 1938 in connection with the adoption of the Plan of Union. That opinion quotes from the *Life and Times of William McKendree*, written by Bishop Payne. It purports to quote from Bishop Payne's *Life*, but I have never verified it—as to what year Bishop Payne referred to in the quotation given. I think the General Conference of 1828 or 1832, as I understand it, the action was begun in the 1928 conference and completed in 1832. I am not sure that the resolution adopted in 1828, recommending that the Annual Conference recommend to the General Conference that the proviso for changing the Restrictive Rules be amended, was an amendment. I am not sure it was an amendment. It may have been a substitute. I cannot say what the Judicial Council intended to state except what is in there. The quotation in the *Journal* purports to come from page twenty-six of volume one of the *Life of McKendree*. The reference to page 265 in the *Daily Advocate* is probably a typographical error. I have been a member of the General Conference of 1930, at Dallas, Texas; 1934 at Jackson, Mississippi; and 1938 at Birmingham. The records of each Annual Conference are made by a secretary chosen for that purpose. They are bound for each quadrennium. No meeting of the College of Bishops was held in 1939 or 1940, authorizing each of the Southern bishops to take legal action either in connection with causing suits to be instituted, or defending any suits that might be instituted, that might be advisable on this whole matter. I do not recall the meeting or the action taken. I would not say that it was not held.

¹ At this point Mr. Park, who had been conducting the examination of Bishop Purcell, became suddenly ill, and the witness was turned over to Mr. Denny for cross-examination.

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I was consulted by Dr. Derrick and by Mr. Williams prior to the institution of the Turbeville district case. They met me at a District Conference. After conference, we authorized attorneys to proceed. I had already arranged with counsel about handling any matter of that kind. This was done under authority of paragraph sixteen of the 1939 *Discipline*. I do not know whether this suit was instituted the first week in June, 1939 or not. We had conferences with attorneys. I do not know the date, but it was after the Uniting Conference. I do not recall that we had any conferences with attorneys prior to the Uniting Conference. I did talk to some attorneys. I do not recall whether it was before or after. Mr. Williams and Mr. Derrick conferred with me and whether, in accordance with the action of the Uniting Conference, I would defend such suits. I could not say when the arrangements with the attorneys were made. I am not sure whether we made arrangements before or after that date. As a bishop of The Methodist Church, acting pursuant to the power conferred by the Uniting Conference, I authorized and approved the institution of this suit. I approved it on behalf of all members of The Methodist Church. I will not say in whose behalf. My own behalf. I considered that I was acting as the agent of the church, having been duly authorized by the Uniting Conference. I was a member of the body that drew the Plan of Union. It seems to me very plain what the language, "The Articles of Religion shall be those held in common by the three uniting churches," mean. Of course there were articles in the Methodist Protestant Church not held by the others which did not go in. The articles of the 1939 *Discipline* are identical with those which the Southern church carried in its own *Discipline*. The Plan of Union provided that the Articles of Religion should be those held through the years. The Uniting Conference was empowered to harmonize the rules found in the *Disciplines* of the three churches relating to judicial administration. In the authority to harmonize rules and regulations, certainly the conference had authority to harmonize the Articles of Religion. It was impossible to bring in the Articles of Religion of the Methodist Protestant Church, because of the fact it carries articles not historically held by the other two churches. The substance was historically the same in a footnote to Article XXIII, which, as a matter of fact, is the article which enjoins all to be loyal to the government. The privilege which was granted to the conference to harmonize the rules and regulations, would certainly authorize harmony where there is a known difference in the Articles of Religion. I do not think the power given to the Uniting Conference in the last portion of the plan entitled,

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"Procedure—Uniting Conference," qualifies the provision in Division 1, Article III. I do not think it qualifies it. The essence is not changed by what could be done. The Uniting Conference would not have the power to adopt the Article of Religion of the Methodist Protestant Church on "Sanctification"—an Article of Religion not carried by the other two churches—for the reason that it was not historically held in common by the other two churches. Within the limitations of the word "historic" and the term "in common," the Uniting Conference might harmonize, and there were no limitations on the power to harmonize. "Historic" simply means the Articles of Religion that have come down to us from the early days; the name of these articles. "In common" means held by the three. It does not mean held by two. The Uniting Conference was limited in putting in the Articles of Religion to those held by the three churches, and it has used no others. There was an error in printing the 1939 *Discipline*. This *Discipline* [the one in the hands of counsel] is the first edition printed. The publishing agents sent to me and to the other bishops a copy of the first edition, and the first thing I did in turning through it, was to see that they had not got the right footnote under Article XXIII. I saw that that was not the footnote adopted by the Uniting Conference, so I got in touch with the editors by telephone and telegraph, and the editors told me that they had not noticed that there was any difference in the two footnotes.

In accordance with the action of the Uniting Conference, it was provided that the Twenty-third Article of Religion of The Methodist Church should be word for word the Twenty-third Article of Religion of the Southern church, including the footnote. The editors assured me the very day I caught the error that the next edition would have the correct footnote. You will see that the next edition had it correct. I called the attention of the attorneys to it. But they had printed 25,000 of them; they have printed 100,000 since with the correct footnote. It is a fact that the Southern church has one form of language for the Twenty-third Article of Religion for its churches in this country and another language for the Twenty-third Article for its churches in foreign countries. The language for the Twenty-third Article, which was put in the *Discipline* of 1922, enjoins all people in foreign lands to be loyal to their governments. Article XXIII, which we had in this country, enjoins all our people to be loyal to the United States government. Of course there is doubt whether that is an Article of Religion or not. Our members in foreign lands objected to that Article of Religion, because they said that it forced them to vow allegiance to the United States, so

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the alternate article was put in. That portion of the Twenty-third Article of Religion which applies to this country, and the portion which applies to foreign lands was an Article of Religion of the Methodist Episcopal Church, South. The Twenty-third Article of Religion is founded on scriptural grounds. "Render unto Caesar the things that are Caesar's and to God the things that are God's," is a good basis. I realize that there is absolutely no difference between the real Articles of Religion held formerly by the Methodist Episcopal Church, South, and the Articles of Religion of The Methodist Church. The legality of union certainly is not involved, because there is no difference in the Articles of Religion. The alternative article put in in 1922 does not appear in the 1936 articles of the Protestant Church. Of course you could not say "held by"—the footnote was explained—but the Uniting Conference had authority to harmonize. The Plan of Union says "held in common" by the three uniting churches and the essence is held in common. Of course members in foreign lands did not vow allegiance to the United States. The essence of the article adopted in 1922 is included in the Twenty-sixth Article by implication. This Twenty-sixth Article, in essence, is the same as the Twenty-third Article. It is just as plain as day and night. Anyone can see it who desires to see it. I do not recall what the footnote was that was adopted in 1820. If the footnote of 1820 did not go the rounds of the Annual Conferences it was not a part of the Articles of Religion. I do not recall that I have ever heard it contended by anybody that the action taken by the General Conference of 1820 was ever passed on by any of the Annual Conferences. The alternative article of 1922 is not in the Northern *Discipline* of 1936. This footnote is generally accepted as not being in there constitutionally and as not being a part of the Articles of Religion. The footnote is explained away, but the two footnotes are identical in essence. If the footnote is the same in spirit, I place it on the same plane with the Articles of Religion. Yes, I think the footnote is the same in spirit as the Twenty-third Article of 1922, except the foreign language. The principle which is stated in the Twenty-third Article is applicable to all lands, not to be loyal to the United States, but to their own country. It is the principle there, and the language can be interpreted to apply to foreign governments. The legal-minded members of the conference, whose names are on the record, set up a committee to bring in a report, and they did bring in a report. By legal-minded, I refer to Dr. Tigert and Bishop Denny. The footnote probably would have satisfied them. The articles published in the prospectus at the Uniting Conference at Kansas City were the articles adopted

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by the Uniting Conference. With reference to any effort to include an "Article of Sanctification," the whole question whether that should be in the *Discipline* is out of order because Article III says, "Articles of Religion shall be those historically held in common." Therefore, if that is not held in common, it cannot be held to be an Article of Religion. A motion to include as one of the Articles of Religion of the united church the article on "Sanctification" held by the Methodist Protestant Church, the motion was ruled out on a point of order. Bishop Edwin Hughes stated that the article mentioned had been placed where it was at the request of the Methodist Protestant brethren for information, and as a witness of their standing, and of the standing of Methodism down through the time of its history, and that it was not a part of the Plan of Union. Now, the delegate from Upper Iowa made the motion that this matter be made the first order of the day tomorrow morning after the report of the committee on the *Journal*. Then M. A. Childers, of West Texas, raised the point of order and the chair ruled that it was well taken. Mr. Childers was a member of the Judicial Council. The quotation made by the Judicial Council from Bishop Payne's *Life of McKendree*, I would say, was with reference to the General Conference of 1816. There is a slight doubt because there is so much that comes after 1816. The only way to be sure is to get the *Journal* of 1816. The quoted portion comes from Chapter XIII. I think it is a fact that the substantive part of the matter, all the way over to page 365, follows exactly the table of contents. The chapter begins with the holding of the General Conference of 1816, but it then begins *in toto* with what purports to have been an address by Bishop McKendree. It then refers to the fact that George and Roberts were elected bishops, and then gives sketches of those bishops and then goes a few pages, and then it gives the manner in which Bishops McKendree, George, and Roberts presided over the General Conference in their superintendency of the church, and on page 364, and at the bottom of that page, a quotation is given from a letter, or some communication, of the senior bishop—that is, Bishop McKendree—to the effect that at the South Carolina Conference he met Bishop George and continued with him awhile, and on page 365, we have this language, immediately preceding the portion quoted by the Judicial Council:

For the present we live here and we will perform faithfully, meaning to pursue our toilsome round of duty. Let us take a sort of review of the condition of the church and the acts of the General Conference, and the first thing which strikes our attention is the absence of acerbity and undue excitement evidenced by the action of the conference . . . But perhaps in no

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General Conference since 1875 had there been more unanimity; so that the changes which were proposed in the law, and made by administration of the government were rejected with increased majorities, except in reference to slavery; while the changes which were made on points of minor importance were evidently beneficial. Let us examine a few of them,

and the second of these changes is the language quoted by the Judicial Council. Although he does not say so, I think he is speaking of the General Conference of 1816.

QUESTION: Was the General Conference of the Methodist Episcopal Church, South, limited in matters which it might consider, to matters touched upon by petitions to it, or what we Methodists call memorials to it, or could it take up for consideration and action any matter it saw fit?

ANSWER: It could take up for consideration matters other than memorials to it. Any member of that conference might introduce any motion on any matter at that conference.

When you come to the right definition of a conference you are taking in a good deal of territory. I was elected to three General Conferences by the North Alabama Annual Conference. I was elected by the whole Annual Conference. I was not voted for by any member of the laity, but when he approved the *Journal* he gave me his support. When he approved the *Journal* he did so as a true record of what had taken place. As a member of the North Alabama Conference, I did not have the right to vote for a lay member without approval. Approval means that the whole Annual Conference gives approval of the actions taken. I believe the *Journal* correctly records the actions taken. Of course it is a matter of interpretation whether I ever cast my vote for a lay delegate to the General Conference. I have always felt that a layman had my support in his election. I have always felt that he has. When the lay delegates were elected, they were elected by the whole Annual Conference. The ministers vote for the ministers and the laymen vote for the laymen, but the total delegation represents the entire Annual Conference, simply because it a custom maintained that way. No, the clerical members are not the Annual Conference, nor are the lay members the Annual Conference. The Annual Conference is a body composed of lay members and clerical members. The Annual Conference elects delegates but not that way [meaning by mass vote]. The Annual Conference as a whole elects its secretary—ministers and laymen voting. I certainly mean to say that the method prescribed for electing delegates to the General Conference calls into play the action of the Annual Conferences in the same method as the election of the

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secretary. After the election of delegates, the Annual Conference would have to approve the *Journal*.

Certainly, the Methodist Episcopal Church, South, was a connec-tional church. Yes, a member of the church is a member of the con-nection. A ministerial member of the Annual Conference may go from one conference to another. That does not mean, however, that he can do that at will.

QUESTION: Bishop, my membership was originally held at the Monument Church in Richmond, Virginia. I lived for three years at Charlottesville, Virginia. When I went to Charlottesville, the pastor of Monument Church gave me my certificate of church membership certifying that I was a member in good standing. I presented that certificate, or letter of transfer, to the pastor of one of the churches in Charlottesville. Did he have to recognize that certificate and accept me as a member of the church holding my membership?

ANSWER: It is customary to do that, although I know of no law forcing it. I have known of certificates being refused. I am not entirely familiar with the *Manual of the Discipline*. It has no force in law.

QUESTION: You know that it was prepared at the direction of the General Conference by the College of Bishops and approved by them as the supreme judicial body of the church?

ANSWER: I don't know that the College of Bishops was the supreme judicial body. The college had some judicial power, and some power of arrest. They had no power after adjournment of the General Conference. They could not be said to be supreme judicially. The college was not in session annually but about three weeks. They were not judicial in the sense that the present Judicial Council is judicial. Nobody had judicial power between General Conferences. The General Conference could not pass upon the constitutionality of its own acts after it adjourned. Nowhere is the supreme judiciary defined as the College of Bishops. Yes, I believe that custom has become the common law of Methodism. It was recognized under the common law of Methodism prior to 1934, that the only interpreter of the constitution of the church was the College of Bishops only during the General Conference. Under a strict interpretation, the footnote at the bottom of pages 121 and 122 of the *Manual of the Discipline* is not thought to be the correct interpretation of the law. There is a note by the editors of the *Manual*. I do not know of any authority—any statute law—where a minister is forced to accept or decline certificates.

It is true that a bishop of the Methodist Episcopal Church, South, was a bishop here and abroad, with powers to exercise his episcopal

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functions at any place within the realm of the church, only if due consideration is given the right and authority of the bishop. In other words, I couldn't go over into another bishop's district. For convenience, the bishops divided the work up. If I were visiting a conference of the Methodist Episcopal Church, South, presided over by another bishop, to whom that district had been assigned, and he had suddenly become ill, under the law of the church, the common law would certainly give me the right to step into the presidency of that conference. There was no statute law that forbade it, but the custom was to ask one of the other bishops to take his place. I think convenience was the main reason for that provision.

The Southern church had a conference known as the Central Texas Conference. I certainly would have the right to visit that conference, which is not in the jurisdiction to which I have been assigned, but is in the South Central Jurisdiction, and if the bishop of the South Central Jurisdiction should be taken suddenly ill, I would have the right to preside either by invitation of the sick bishop or the committee of the Council of Bishops. Bishop Straughn was assigned to Oregon and has already served six months.

QUESTION: Let me call your attention to certain provisions of your Plan of Union and see if you followed your union plan in the case of Bishop Straughn. The provisions are as follows, all taken from Division Three, Article No. V:

The Bishops shall have residential and presidential supervision in the Jurisdictional Conferences in which they are elected. A Bishop may be transferred from one Jurisdiction to another Jurisdiction for presidential and residential supervision by the Council of Bishops when such transfer is requested by the Jurisdictional Conference to which such proposed transfer is to be made.

ANSWER: A bishop may be assigned by the Council of Bishops for presidential service, or other temporary service not to exceed a year, in another jurisdiction than that which elected him, provided request is made by a majority of the bishops in the jurisdiction of the proposed service.

In case of an emergency in any jurisdiction, through the death or disability of its bishops, the Council of Bishops may assign one or more bishops from other jurisdictions to the work of the said jurisdiction, with the consent of a majority of the bishops in that jurisdiction.

QUESTION: Did Bishop Straughn go to another jurisdiction simply on the appointment of a committee of the Council of Bishops?

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ANSWER: He went to another jurisdiction through one of the bishops leaving.

QUESTION: That was in accordance with the plan?

ANSWER: I didn't mean he was invited.

QUESTION: We will assume that you are at the Texas Central Conference; that the bishop of that jurisdiction, holding that conference, dies, and is survived by only one bishop of that South Central Jurisdiction—I am stating a hypothetical question—could you step into the presidency of that conference from that emergency, unless the whole Council of Bishops should first meet and temporarily assign you to that jurisdiction with the consent of that one surviving bishop?

ANSWER: I don't know whether the executive committee of the council would have that power or not. I would have to study the law before I could answer that question.

QUESTION: Do I understand you to say that the College of Bishops, or your Council of Bishops, can form a committee to exercise the powers conferred by the plan only on the council?

ANSWER: The council reviews all the acts of the executive committee, and either approves or disapproves the acts of the committee.

QUESTION: Before you could become allied with that Texas Central Conference, you would either have to have the assignment of the Council of Bishops or the executive committee, and the approval of one surviving bishop of that jurisdiction?

ANSWER: I don't know whether I would or not. Of course if I were assigned by the one surviving bishop and the committee, it would be subject to the approval of the council, but it would not in the least affect the status of the general superintendency.

I certainly have powers with the council to go into the state of Texas. I may be assigned to preside in Texas. If a member of the conference should object to it, I would still have the right to exercise the powers, and the full powers of a general superintendent, subject to the conditions we were just discussing. These conditions were laid on me by the common law of the church. I think there are five bishops in the South Central Jurisdiction. The Council of Bishops consists of about fifty bishops.

QUESTION: We will assume that every member of the Council of Bishops desires to assign you to work in Texas, and that there are three bishops in the South Central Jurisdiction. If those three bishops of the South Central Jurisdiction object to your assignment to Texas, can you be assigned to Texas?

ANSWER: No, I think I could not be. However, that would not invalidate my general superintendency. I simply mean that these

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methods of emergency for bishops are put in there for convenience. There may be a reason why I should not go to Texas, which the other three bishops would know. If I were assigned to go to Texas, that would not affect the validity of my general superintendency. We have had many instances where, before the union of the churches, bishops were not assigned to certain conferences because of certain objections, but that did not affect the validity of their general superintendency. The College of Bishops thought it inadvisable. It is inconceivable that every member of the council thought I should go to Texas, except those three bishops—you raise a hypothetical question.

I have gone through the *Journal* of the General Conference of 1816 as best I could in this place. I have not found in it any specific reference to any action of the conference of 1816 with reference to changing the proviso. It must be said, though, about that *Journal* of 1816, that the *Journal* is in such a condition that no one could tell. There is a supplement to the *Journal* of 1816 carrying that and other matters discussed. John Murray moved that the thirteenth answer on the amendment page of the last *Discipline* edition be struck out. There are many indefinite statements in it. I am frank to state that I do not think there was any action taken, because Murray's statement bears that out. I believe Bishop Neely was a bishop of the Northern church. The Judicial Council quoted from a book entitled *Constitutional and Parliamentary History of the Methodist Episcopal Church*, by a Dr. Buckley, of the Northern church, editor of the *Christian Advocate*. He has been dead for many years—how many I do not know. I think he died within the last twenty-five years.

ON RE-DIRECT EXAMINATION

I have been a minister for thirty-four years. Paragraph 226 of the *Discipline* of the Methodist Episcopal Church, South, of 1938, does not say that there shall not be more than one steward to every thirty members. Of course we have had stewards emeritus—honorary stewards. There are many instances where there are more than thirty members for one steward. Upon the common usage of the church, in instances where the pastor thinks he needs more than the maximum named in Section 226, he appoints stewards. And the pastor in a Quarterly Conference can nominate a steward to that Quarterly Conference. The pastor has always had the right to appoint a steward, and certainly where a steward refuses to serve or is incapacitated. I could not say whether it has, or has not, been a common usage throughout the church to exceed the number stated.

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RE-CROSS EXAMINATION

Paragraph 226 provides for a limit of one to thirty. I do not know of any law limiting the number of stewards a church might have. Yes, I think if the pastors of the Quarterly Conference saw fit, they could elect every member of the conference of age as a steward. Yes, I know it is the law of the church that a steward does not have to hold membership at that church. So, under the law of our church, in my opinion, every member eligible to be a steward, might have been elected a steward of the Turbeville-Olanta charge. My interpretation of Paragraph 226 is that it is to establish a minimum number of stewards. In my opinion, there is no law preventing more than this limit. The common law of the church allows for the election of a steward in the interim between conferences. I agree with Bishop Denny that that is a good law of the church. The language which immediately precedes Paragraph 226, "What shall be the number of stewards in each charge?" does not alter my opinion. I have had fifteen or more stewards in my charge, simply because we needed them. Yes, Bishop Watkins and I made an affidavit to the complaint in the case of *Purcell v. Summers, et al.*, in the federal court at Columbia.

XII

BRIEF OF THE TESTIMONY OF DR. PAUL NEFF GARBER

[Sworn for the Plaintiffs]

I AM PROFESSOR OF CHURCH HISTORY, SCHOOL OF RELIGION, DUKE UNIVERSITY. My work as professor of church history is especially on Methodism, and I teach several courses in Methodism. I have published several books. In 1918, *The Spirit of Methodism*; in 1930 *The Romance of American Methodism*; then a biography of Bishop Baker in 1937; then in 1938 a pamphlet on *The Legal and Historical Aspects of the Plan of Union for the Unification of the Methodist Protestant Church, the Methodist Episcopal Church, and the Methodist Episcopal Church, South*, and in 1939 a book entitled *The Methodists Are One People*.

I did considerable research into the history, doctrines, Articles of Religion, and the polity of the three churches. Most of my researches and articles have been related to American Methodism, but, of course, I have made research into the English. My research covered all the periods of the three churches. I think I am familiar with the Plan of Union of the three churches. There has been more than one attempt to unify the Methodist Episcopal Church, South, and the Methodist Episcopal Church.

I am familiar with the plan made in 1925 which was defeated. One difference between the plan of 1925 and the plan adopted in 1938, was that the plan of 1925 was to unite the Methodist Episcopal Church and the Methodist Episcopal Church, South. There were then involved in the plan of 1938, the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church. In 1925 the plan provided for two jurisdictions, a Northern and a Southern, which really represented the two Methodisms. For example, the Northern Methodist churches remained in the Northern jurisdiction, and our Southern churches and those in the Northwest remained with the Southern jurisdiction.

Another difference was that there was no Judicial Council provided in the plan of 1925. This plan of 1925 popularly called "the partnership plan;" the churches really becoming two jurisdictions without legal majorities—not lawful majorities—backing up the jurisdictions, yet really a partnership in one church. Those are some of the differ-

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ences. More voted for the plan of 1925 than voted against it, but it did not receive the requisite constitutional majority.

Yes, I have made a study of the arguments which are commonly and popularly used, that the present plan was not legally adopted because it did not receive the affirmative vote of each and every Annual Conference, and in my pamphlet I gave my view on it after research in the subject.

It was contended that the Plan of Union needed not only the approval of three fourths of the members of the Annual Conferences and a two-thirds vote of the General Conference, but the Plan of Union must have the approval of a majority of each Annual Conference.

Because this contention is based on a phrase or clause taken from the Plan of Union, and it is contended that, because the Articles of Religion might be involved, all the Annual Conferences must approve the plan. In the proposed Plan of Union, Division One, Article III, reads as follows: "The Articles of Religion shall be those historically held in common by the three uniting Churches." It was contended that Article XXIII, of the Articles of Religion of the Methodist Episcopal Church, South, was not an article held in common by the three uniting churches. It was asserted that, since the plan of union might alter Article XXIII of the Articles of Religion of the Methodist Episcopal Church, South, the Plan of Union must be approved by every Annual Conference in addition to the two-thirds vote of the General Conference. It was also contended that the Plan of Union specified amendments to the constitution shall be made upon a two-thirds majority of all the members of the several Annual Conferences present and voting, except in the case of the First Restrictive Rule, which shall require a three-fourths majority of the members of the Annual Conferences present and voting.

The unit of voting is the members of the Annual Conferences and not the Annual Conference.

In the organizing of the Methodist Episcopal Church, Article XXIII was in the *Discipline*, perhaps suiting the date of 1784 more than today. Then in 1820, at the General Conference, an explanatory footnote was placed in the *Discipline*, which read as follows:

As far as it respects civil affairs, we believe it the duty of Christians, and especially all christian Ministers, to be subject to the supreme authority of the country where they may reside, and to use all laudable means to enjoin obedience to the *powers that be*: and therefore it is expected that all our preachers and people, who may be under the British or any other government, will behave themselves as peaceable and orderly subjects.

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This footnote was added to meet a peculiar situation among our Canadian Methodists because they did not care to vow allegiance to our government. Now that footnote has remained in the *Discipline* of the Methodist Episcopal Church to the present time. It was in the *Discipline* of the Methodist Episcopal Church, South, until 1906. In 1906, at our General Conference, it was claimed that some of our Southern Methodist missionaries were hindered in their work in foreign countries because the people were concerned about becoming members with the pledge limited to the United States. So the General Conference sent down to the Annual Conferences for their approval, the Article XXIII to be used in the *Disciplines* of foreign lands. This was finally adopted in 1922. But since 1922, the following statement has appeared in the footnotes of the *Disciplines* of the Annual Conferences, along with the original Article XXIII put in the *Discipline* in the record already.

No change has been made in the Twenty-third Article by the adoption of the Plan of Union. The contention has been made that the Articles of Religion would be changed because this was not in the Protestant Church. In my opinion, there is no doctrinal implication in the Twenty-third Article. It is simply a statement that Methodists will be loyal to the governments under which they live. There is no element of theology or doctrine of religion in it. It is my opinion that the substance of the Twenty-third Article is that a Methodist must be a good citizen of the country in which he lives. I do not think that there is any basic difference in the Articles of Religion which have been historically held by the three uniting churches. I mean any substantial difference. Prior to 1808, there was only one Methodist Church. Prior to 1808, all our preachers who had traveled four years or more met in General Conference. The lay members did not participate. The General Conference was the supreme legislative body.

It was changed at the June conference in 1808, because many of our preachers living on the frontier or in Maine or in the South, found it very difficult to attend conferences at Baltimore. It was also felt that some ridiculous legislation might be passed that would not be good for the church. So, at the General Conference of 1808, under the leadership of Joshua Soule, a plan was made by which the delegates from their majority membership got equal representation to the various sections of the church. And then it was decided that General Conference, delegated to a representative body, should not have supreme power. So six Restrictive Rules were made, and those rules applied to the publishing house, to the Articles of Religion, and to the pastor representation in the General Conference, and in order to change those

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things, the Annual Conferences had to pass new legislation, I think by a two-thirds vote. I believe those are the main points about the action of the General Conference in 1808.

To change any of these Restrictive Rules, they had to submit the rule to the Annual Conferences. In 1832 a change was made. This plan of 1808, in regard to changes involving the six Restrictive Rules, did not prove satisfactory, because any one Annual Conference could block the program of the church in which all the Annual Conferences might desire a change, and leaders of the church felt that such a plan should not go on. Dr. Bangs said the church had a yoke upon it that the church could not bear, and, as reported at the General Conference of 1832, recommendation was made that when alterations shall have been recommended by two thirds of the General Conference, then if three fourths of the members of the Annual Conferences concur, the legislation could be changed. It now goes back to the members of the Annual Conferences rather than to a vote of the Annual Conference. There was also a proviso which read:

Provided, nevertheless, that upon the concurrent recommendation of three-fourths of all the members of the several annual conferences who shall be present and vote on such a recommendation, then a majority of two-thirds of the General Conference succeeding, shall suffice to alter any of the above restrictions, excepting the first article.

There was no method left for the alteration of the First Article in the Methodist Episcopal Church, but at the General Conference of the Methodist Episcopal Church, South, of 1906, when the question of the footnote to Article XXIII was raised, a committee of the General Conference stated that this involved the Articles of Religion, and this committee recommended to the General Conference that the old proviso of 1808 still was in effect in the Methodist Episcopal Church, South, and the General Conference, by a General Conference vote, inserted that phrase of 1808, which said that all Annual Conferences must approve that change in the First Article. That was declared by the Judicial Council to be unconstitutional. It is my opinion, there being no method existing at the time for changing the First Restrictive Rule, that the Church, as a whole, in its sovereign power, could adopt one, and they did work out a plan, and it is my opinion that the plan for changing the First Restrictive Rule was done constitutionally. The provision that was put in by the General Conference of 1906 was taken out by the General Conference of 1938 after the Judicial Council had ruled it unconstitutional. There has never been any right in the members of the Methodist Episcopal Church, South, as to voting on constitutional

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changes. The *Discipline* provides the method through the General Conference and the members of the Annual Conferences. We have various conferences. They start back to the Quarterly Conference and the District Conference, from the Annual Conference to the General Conference. The members of the local congregation can elect one or more of the delegates.

I have made a study of the history of the separation of the Methodist Church, South, from the Methodist Episcopal Church. On that separation, the members did not vote in the sense that their voting had any bearing on the separation. Here, in a letter, is a sentence which says to the Annual Conferences, in instructing the delegates, to conform their instructions as far as possible to the needs and wishes of the membership within their several conference bounds. There has been talk about voting taking place. That was a straw vote. In the *History of the Organization of the Methodist Episcopal Church, South*, on page 127, it is stated:

That, should the Annual Conferences in the slave-holding States find it necessary to unite in a distinct ecclesiastical connection, the following rule shall be observed with regard to the Northern boundary of such connection:—All the societies, stations, and Conferences adhering to the Church in the South, by a vote of a majority of the members of said societies and stations

shall remain under the care of the Southern church, and provide some other place to the Northern church. This applies to the border territory and not to the entire Methodism.

The Uniting Conference was a General Conference of the uniting churches with limited powers. They could not put in the *Discipline* things not found in the *Discipline*. I am familiar with the way in which delegates have been elected in the Methodist Episcopal Church, South, to the General Conferences. At the Annual Conference, preceding a General Conference, the lay delegates to the Annual Conference select their lay representation, and the clergymen select clerical representatives to the General Conference. This plan was followed in the selection of delegates to the Uniting Conference, and, I believe, certain delegates who were members of the commission [?] on unification. These were approved at the General Conference at Birmingham.

When a man joins or takes the vows, and becomes enrolled in a local church, he becomes a member of the entire denomination. If he desires to be enrolled in another local church he takes his certificate to the new church, and joins it as a matter of right. If a man, after receiving his certificate, holds it for twelve months, and in the meantime goes out and commits a crime, and the pastor knows about it,

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the *Manual of the Discipline* says the pastor must accept the certificate and then place him on trial. The *Manual* says the church is one. He is guaranteed "due process of law" by the *Discipline*. I have not been a pastor, but I understand that a man who is a member of one local church can be a trustee or steward of another church. The trustees of a local church cannot sell the property of a local church and divide the proceeds among the members. I do not think that has ever occurred in Methodism. If it did, it was an illegal action.

Even if it should be held that the change in the method of changing the Restrictive Rules which is involved in the Plan of Union, this would not affect the legality of union. I do not feel that changing—any change in the Restrictive Rules, or in the method of changing them—would have any effect on the Plan of Union at all.

MR. DENNY: Do you mean the "Plan of Union" or the "Fact of Union"?

ANSWER: You have asked the question and the claim is made that this is illegal, and the Plan of Union would be thrown out. My answer is that there is nothing in the Methodist Episcopal Church, South, supporting that contention. Paragraph 43 [of the *Discipline*] gives the Annual Conference merely the power to participate with the General Conference in the alteration of the six Restrictive Rules, but there is no mention in any of the Restrictive Rules concerning the changing or the method of changing the Articles of Religion.

CROSS-EXAMINATION

Some minor changes were made in the original Articles of Religion in 1804, but there were no basic changes. There have been no basic changes in the Articles of Religion since 1784. I cannot put my hand on it right now, but one change was made at one of the General Conferences. I have not checked each one. I believe at the General Conference of 1906 they started to discuss about the reference to these articles. There was a report on the articles in one of the *Journals*. I have accepted secondary sources on that, based on reports made at the General Conference. I think at the General Conference of 1906 there was some question up about the creed. I am not referring to the Apostles' Creed; I am referring to the twenty-five articles.

In my estimation, an Article of Religion is an article that refers to doctrine, religion or theology. [In reply to the question: Isn't an Article of Religion "a statement of the faith of the denomination, adopted by the agencies of the denomination empowered to state its faith"?] I think that is correct; a statement in general of what we believe. An Article of Religion is an expression of a belief or faith. In

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order to become an Article of Religion of our church, it must be adopted by the powers authorized to express the belief or faith of that church. In my testimony that, "In my estimation, there is no doctrinal implication in the Twenty-third Article of Religion," it is simply a statement that the members will be loyal to the government under which they reside. When I refer to doctrine, I refer to something like "justification by faith." In 1784 there was some question about loyalty to the government. Yes, I think that in 1784 this meant that it was a Christian's duty to be loyal to the powers that be.

I think Dr. Bangs was a member of the General Conference of 1844. Dr. Bangs went to the Northern church. He was one of the leading and influential men of that church. I think it is true that he promulgated in 1844 the powers and conceptions of the General Conference, which were adopted by the Northern delegates. Yes, you are correct in saying that the conception of the General Conference was that they had a right to discipline Bishop Andrews and request that he refrain from exercising the functions of his office without preferring charges and without a trial. I do not think any specifications of trial were ever presented, and no trial was had.

Yes, the Judicial Council quoted from Dr. Bangs [Vol. IV, p. 103], that the procedure for the changing of the Restrictive Rules was adopted because they had found that the machinery of the church was too strait-laced in requiring the approval of each Annual Conference. He did not base his opinion on the procedure which, subsequent to 1832, was required to be followed in amending the first Restrictive Rule. My opinion is, he keeps talking about doing away with the Annual Conference. He qualifies it by saying "except the first." We might take a different opinion about what he meant. I have stated that, in my opinion, after 1832, it did not require the recommendation of all Annual Conferences to amend the Articles of Religion. No, the Articles of Religion, after 1832, could not be amended by a two-thirds vote of the General Conference and a three-fourths vote of all the Annual Conferences. I think after 1832 the feeling in the church was that the First Article—at least, that is what the commentators thought about it—they did not know exactly what they wanted to do about it. When that was left in there—"except the first"—they could not change it. They could not change this proviso in an Article of Religion. After 1832 I do not think the Southern church could alter its Articles of Religion by a two-thirds vote of the General Conference and a three-fourths vote of the members of the Annual Conferences present and voting. We had to find some way to change them. I think that after 1832 the articles could be changed by sending down to the Annual

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Conferences for remedying that phrase "except the first." Yes, it is my opinion that after 1832 our Articles of Religion could be changed only by this process—by a two-thirds vote of the General Conference and a three-fourths vote of the Annual Conferences, and it would be necessary to remove the provision "except the first." With these words removed, the Articles of Religion might be amended by a two-thirds and a three-fourths vote. Buckley of the Methodist Episcopal Church, has expressed that view. Yes, I had in mind a question made by the Judicial Council—I am not certain it was Dr. Buckley—I thought it was. Dr. Tigert, in 1906, held it should go back in the old way. Mc-Tyeire took Tigert's view. Yes, I have read the report of 1906. James A. Anderson took the view which I have advanced. In answer to one of your questions, I stated that my view was supported by a number of commentators; in that, I think I had in mind the commentators on the action of 1832. I think I said that it was my view that it would have been permissible after 1832, to have amended our Articles of Religion by a vote of the several Annual Conferences. Yes, if after 1832, the Articles of Religion might have been amended simply by a majority of the members of the Annual Conferences, it would have been easier to amend them in that way—if it had been done that way.

Yes, I referred to a pastoral letter which was sent by the Southern delegates to the General Conference of 1844, to the Annual Conferences of the South. I used the words "pastoral address," in a general way; not the title of it. My opinion is that this pastoral address was not sent to the ministers and members of the Methodist Episcopal Church, South, but to the Annual Conferences because it tells there . . .

The Uniting Conference could not adopt any Articles of Religion that could not be found in one of our three uniting churches. The Methodist Protestant Article on Sanctification was not adopted because it was not held in common by the other two churches. The general impression was that it was not an Article of Religion. Yes, under the Plan of Union, every article that was historical to Methodism and was held in common by the three uniting churches, became one of the articles of the new church. And the Uniting Conference was not empowered to add to those articles nor to subtract from them—that is, not those held in common. Yes, it is my view of the Plan of Union that every historical article of Methodism, which was also an article of Methodism, was also an article held in common by the three churches, automatically became the Articles of Religion of the new church, and the Uniting Conference could not make any basic changes in those three groups. The alternative article adopted by our church in 1938 to govern foreign Methodists is held in common. I do not see any differ-

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ence from the footnote. No, in my opinion, the General Conference could not alone amend the procedure for altering the Restrictive Rules. It is my opinion that it required the same vote to amend the procedure as was required to amend the rules themselves, but my statement referred to the action on the plan as making it legal.

QUESTION: Suppose it should develop that the recommendation of each Annual Conference in the Southern church was necessary to alter an Article of Religion, and the Plan of Union prescribes a different procedure for altering the Articles of Religion, it would therefore follow that, at least that part of the Plan of Union had not been validly adopted?

ANSWER: About the validity adopted, I do not know whether that would throw out the whole Plan of Union or not. The Plan of Union that has been adopted by The Methodist Church is not tied up with the Articles of Religion.

QUESTION: If it should be determined that the law of the church did require the action of each Annual Conference to amend the articles, and if it should also be determined that the procedure for amending the articles could not be altered, save on the recommendation of each Annual Conference, then, in the light of the fact that the plan changes the procedure, would you believe that the plan had been adopted by the Methodist Episcopal Church, South?

ANSWER: The Plan of Union could be adopted even with those things you have stated. It goes back to whether, in my opinion, the General Conference could unite them. My opinion is that the question of changing the articles would not invalidate uniting with another church, unless we had all the other angles. I do not see anything in the *Discipline* about the uniting of churches. I do not see how changing the Articles of Religion would have any relation to the Plan of Union. I think that if, in uniting the churches, the basis provides for a change in the Articles of Religion, the two things are entirely separate.

QUESTION: Would the following, in your opinion, be an accurate definition or description of a General Conference of the Southern Methodist Church, namely, a group of persons, half-minister and half-laymen, elected in the proportion set forth in the law, by the lay members of the respective Annual Conferences, and the ministerial members of the respective Annual Conferences, meeting at such time as is set forth in the law, and empowered to adopt rules and regulations, in so far as its actions are allowed by the constitution of the church. Do you think that is an accurate definition of a General Conference?

QUESTION: The ministerial delegates to be elected by the ministerial

ANSWER: Yes, sir.

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members of the Annual Conferences, and the lay delegates to be elected by the lay members of the Annual Conferences; that refers to the Methodist Episcopal Church, South?

ANSWER: Yes, sir.

Yes, I have said that the Uniting Conference is a general uniting conference of the three uniting churches. It is not my opinion that the provisions adopted by our church in 1866 and in 1870 providing delegates to the General Conference of the Methodist Episcopal Church, South, related to the Uniting Conference. Take this concrete case: The General Conference of the Methodist Episcopal Church, South, commissioned to the Alabama Conference ten delegates to the Uniting Conference, five lay and five ministerial. When it prescribed that delegates shall be elected by the Annual Conference, I do not see any difference in that and in saying that the lay members should be elected by the lay members, and the ministerial members should be elected by the ministerial members. My opinion would be that it would be the same. I cannot say whether we elected delegates in western North Carolina without turning back to see whether the law specified any particular way in which it should be done. I do not think the average delegate would look up any plan of union. No delegates on the floor would check on that plan of union. The Annual Conference is made up of both clergymen and laymen. It takes both to make up the Annual Conferences.

RE-DIRECT EXAMINATION

I do not know any law of The Methodist Church or the Methodist Episcopal Church, South, that the election of lay delegates by laymen and ministerial delegates by ministers is not legal.

THE REFEREE: With the permission of counsel, I would like to ask Dr. Garber some questions that you have not touched on. This paragraph in the *Manual of the Discipline*, referred to in Bishop Moore's testimony, which gives a quotation from the *Journal* of 1796, and which appears as a footnote at the bottom of pages 112 and 113, which is in evidence, I would like, for my own information, to inquire if you ever made any study of that portion of the *Journal*, if so, your construction of it?

ANSWER: I haven't made a detailed study of that.

REFEREE: Read it over and see if you feel that you are qualified to testify to the construction of it.

ANSWER: You mean 1796? I have read that. That refers to the action of the General Conference of 1796. In making the statement as to how church property should be held in the Methodist Episcopal Church, one clause states that preaching houses shall be invested in the General

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Conference, then goes on to state how we hold property through trustees, and that this method has been set up so that it will be satisfactory to the courts of law, and that the plan is that the trustees hold the property for—in their name—for the church, but that the preaching houses shall always be held open for the preachers sent there by the Annual Conference. Now, what was your question?

REFEREE: What I would like to know is whether your study of the history of the church has been sufficient to enable you to give me the common construction placed on that section by the church?

ANSWER: Our accepted construction of that is that our property is not to be held in the name of the General Conference, but that the trustees shall hold this property for the members of the church, and that the trustees cannot keep a preacher from coming there and preaching. Might be said to be joint owners.

REFEREE: That is your construction?

ANSWER: Yes, sir.

REFEREE: I want to know whether that particular clause put in evidence here has been construed, and whether your study of the history of the church, as an expert, has been sufficient to enable you to give a construction of that particular language? Of course, I know that there have been changes from time to time. What I want to know is what that language means, or whether it has been changed?

ANSWER: Let me refer to this a moment:

As heretofore mentioned, the Methodist Episcopal Church, South, was a connectional and not a congregational church. The local congregation did not select its preacher, but received the preacher appointed by the bishop who was in charge of the Annual Conference within whose bounds the local church was situated. This connectional feature arose when John Wesley, the founder of Methodism, caused to be erected the first Methodist preaching houses in Bristol in 1779,

and knowing no other way, I suffered the deed to be drawn up in that way. Mr. Whitefield wrote me a warm letter asking: "Do you consider what you did? If the trustees are to name the preacher, they may exclude even you from preaching in the house you have built. Pray let the deed be immediately canceled."

Wesley followed the advice of Whitefield, and this is the origin of the trust clause for holding Methodist local church property. As the custom of the Methodist Episcopal Church in America, this plan was followed.

It has been contended that the General Conference of 1796 made this declaration in regard to ownership of church property: "By which

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we manifest to the whole world, that the property of the preaching houses will not be invested in the General Conference." By itself, this sentence is misleading. However, immediately follows the declaration:

But the preservation of our union, and the progress of the work of God, indispensably require that the free and full use of the pulpit should be in the hands of the General Conference and yearly conferences authorized by them. Of course the traveling preachers who are in full connexion, assembled in their conferences, are the patrons of the pulpits of our churches. And this was absolutely necessary to give a clear, legal specification in the deed.

The same conference adopted a form of deed for holding title to church property, as follows:

In trust, that they shall erect and build, or cause to be erected and built thereon a house for the house of worship, for the use of the members of the Methodist Episcopal Church, of the United States of America, according to the rules of the Discipline which, from time to time, may be agreed upon and adopted by the ministers and preachers of said church of the General Conferences of the United States of America, and trust and confidence that they shall forever permit preachers, belonging to said church, as shall, from time to time, be duly authorized by the ministers and preachers of the Methodist Episcopal Church, or by the General Conference, and none others, to preach and expound God's word in there.

Bishop Coke and Bishop Asbury, in their comments on the *Discipline* in 1798, made the following statement:

The property of the preaching houses is vested in the trustees; and the right of nomination to the pulpits in the General Conference, and in such as the General Conference shall, from time to time, appoint.

These first two bishops of Methodism further explained that this division of power between the local trustees and the General Conference, whereby the latter became the patrons of the pulpits of our churches, was essential to the itinerant plan, stating, "Without it, the itinerant plan could not exist for any long continuance."

This matter of the trust clause and trustees is discussed at length in the *Manual of the Discipline* by Bishop Collins Denny, pages 109 to 113, and he states:

In view of the connexional character of the Methodist Episcopal Church, South, and the facts herein stated, it cannot be claimed that any persons, be he Bishop, minister, or lay member of the church has any personal or proprietary interest, either as owner or beneficiary, in any of the local congrega-

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tional property, other than that they are officers and members of the local congregation, and therefore, no local congregational property can be alienated by the trustees, except in the manner provided, and for the purposes specified in the Discipline!"

Your Honor, that is as full a statement as I can make.

RE-CROSS EXAMINATION

The affidavit from which I read was executed by me in the case of *Purcell, et al. v. Summers, et al.*, pending in the federal court. I do not know whether in that affidavit, I quoted the whole trust as adopted by the General Conference of 1796; I did not mean to leave out anything. I would say that I prepared that affidavit, but I had help. I did not make any special investigation for that one affidavit. I was acquainted with the facts. I do not think that before I made that affidavit, I had made any special study of the language "By which we manifest to the whole world, that the property of the preaching houses will not be invested in the General Conference." In my research I have gone back and read the trust clause adopted in 1796 quite often. The interpretation given in that affidavit is my interpretation. In my affidavit I said, "No member of the Methodist Episcopal Church, South, be he bishop or lay member, has any personal or proprietary interest, either as owner or beneficiary of any local congregational properties."

I am a member of the Western North Carolina Conference. My beneficial ownership in the property of the Monument Methodist Church, in Richmond, is because it is worked through one Methodism. I do not know anything about the law. What I am speaking about is that we are all working for the church. I cannot answer a question about what the law says about beneficial rights. You use the words "civil rights." Duke University gets so much raised by all the churches; it seems to me I have a beneficial interest in those churches. My name is not on the deed to the real estate owned by the trustees of the Monument Methodist Episcopal Church, South, at Richmond, but that property is held for a purpose of which I am a member. The purpose is the proclaiming the gospel of Jesus Christ by the Methodist way of doing. I am not a member of the congregation, but my conception is that every member of our church has beneficial ownership in each piece of congregational property, in the same way that I have. No, the church was not organized for financial profit. My use of the term "beneficiary ownership" is that every member has a property right in that church, and no group can take it away. My conception is that in The Methodist Church, which has a membership of about eight million people, every-

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thing connected with the church is the property of the eight million people.

.
At the conclusion, at this point, of the oral examination of Dr. Garber, he was asked what commentators agreed with him in his view of how the Articles of Religion could be amended after 1832, and the witness was given time to find such authorities and to communicate his findings to the referee by letter, such communication or communications to be placed in the record as a part of his testimony. In response to this permission, Dr. Garber sent to the referee the following communications:

August 23, 1940

Hon. Nathaniel B. Barnwell
Charleston, S. C.

DEAR MR. BARNWELL: I have not as yet received the official statement of my testimony from the Court Stenographer, but Mr. Collins Denny, Jr., has given me the information which I desired. You have a copy of his letter of August 20th in which he gives the following paragraphs, as to my testimony and the sources which I was to furnish you:

You testified that in your opinion, under the law of the Southern church, it would be possible to amend the Articles of Religion or otherwise alter the first restrictive rule only by the following procedure:

First: It would be necessary to strike from the proviso at the end of the restrictive rules (Paragraph 43 of the *Discipline*) the words "excepting the first article," and that these words could be struck only on the vote of three-fourths of the members of the several annual conferences present and voting and two-thirds of the General Conference; next, these words having been so struck, the Articles of Religion might be amended by like vote, to wit, three-fourths of the members of the several annual conferences present and voting and two-thirds of the General Conference.

I asked you whether you knew of any writers or commentators on Methodist law and history who had taken this view. You said there were a number of writers who had taken this view. I asked who they were. You could not recall. We left the matter with the understanding that you might furnish to the Referee excerpts from any writers, together with a brief statement setting forth who was the writer and what were his qualifications. If you furnished any such excerpts, those excerpts were to be treated as a part of your testimony. If you furnish none, then it was to be understood that you could quote no supporting authorities.

I am enclosing statements from three authorities in support of my

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testimony, namely, Bishop Thomas B. Neely, Dr. James M. Buckley, and Dr. James A. Anderson.

Bishop Neely's statement is from *A History of the Origin and Development of the Governing Conference in Methodism, and Especially of the General Conference of the Methodist Episcopal Church*, Cincinnati, 1882, pp. 405-407. Bishop Neely was for many years a Bishop of the Methodist Episcopal Church. He died, I believe, about 1928. He was recognized as a historian of the Methodist Episcopal Church with special emphasis upon Methodist polity. He was the author of a number of books among which were *The Evolution of Episcopacy and Organic Methodism*, and other similar topics. His works have been considered as standard authorities.

Dr. James M. Buckley was recognized as a leading historian of the Methodist Episcopal Church. He served for many years as Editor of the New York *Christian Advocate*. Among his best known books are *A History of Methodists in the United States* and *Constitutional Parliamentary History of the Methodist Episcopal Church*. The statement which I am enclosing from Dr. Buckley is found on pp. 233-234 of the latter book.

Dr. James A. Anderson is an honored member of Arkansas Methodism of the Methodist Episcopal Church, South. I believe he has served as a preacher in both the Little Rock and North Arkansas Conferences. He has been a contributor to many of the periodicals of Southern Methodism and is held in high esteem for his knowledge of Methodist Law. He has presented very valuable views on the various aspects of Methodist Constitutional law. The statement from Dr. Anderson is from the *Methodist Quarterly Review*, Vol. 79 (1930) pp. 178-179.

Please pardon my delay in sending this portion of my testimony. I have been very busy in connection with my directorship of the Junaluska School of Religion and had hoped to have a stenographic report of my previous testimony before sending you this additional material.

Cordially yours,

(Signed) PAUL N. GARBER

Buckley, James M. *Constitutional and Parliamentary History of the Methodist Episcopal Church*, New York, 1912, pp. 233-34.

At the same time that the alteration in the Proviso for changing the method of altering any of the restrictions was effected, an addition, equivalent to another Restrictive Rule, was made. There were inserted into the Proviso, the words "Excepting the first Article." This is a limit upon the Proviso, which would appear to prevent, by any means whatever, any change in our

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Articles of Religion and the establishing of any Standards or rules of doctrine "contrary to our present existing Standards." But this is not the case.

Before this alteration was made the Annual Conferences and the next succeeding General Conference could destroy, modify, or enlarge *every one* of the Restrictive Rules. The fact that it was Constitutional to insert, in the Proviso for amendment, the words "excepting the first Article" demonstrates that, had they been placed there at the first it would have been constitutional to remove them. Therefore, by the General Conference and the constitutional votes of the members of the Annual Conferences, and, at the present time, the votes of the Lay Electoral Conferences, the words could be removed, and that having been done, the First Restrictive Rule could then be altered by the same method as any of the others.

Some who feared that, under this Rule, our Standards of doctrine could be easily mutilated, have tried to prove that the First Restrictive Rule could be changed *only* under the old law; that is, if *all* the Annual Conferences by a majority vote should agree to change the said Rule, and the ensuing General Conference should ratify the same by a vote of two-thirds. That method was annihilated and another put in its place, and the idea that it could be called from its grave in which it had lain for half a century is without support.

The Rule as it was enacted in 1808 bore the same relation to the Proviso for changing the Restrictive Rules as did the Rule protecting the episcopacy or any other Restrictive Rule. Now, the Articles of Religion and "our present existing and established Standards" are more safely protected than any other part of the Constitution.

Neely, Thomas B. *A History of the Origin and Development of the Governing Conference in Methodism, and Especially of the General Conference of the Methodist Episcopal Church*. Cincinnati, 1892, pp. 405-7.

The new proviso, as in the report of the above committee and in the Discipline of 1832, allowed an amendment to be passed in by the General Conference and then concurred in by the members of the Annual Conference, or it might originate in the Annual Conference, be passed from Conference to Conference, and be agreed to by three-fourths of those voting in the Annual Conferences, and then be passed by a two-thirds majority in the next General Conference. Either course might be pursued in amending the constitution.

There was, however, as we have seen, one exception, and that was in relation to the First Restrictive Rule.

The insertion of the words, "excepting the first article" made it impossible by the above process to change the Restrictive Rule in regard to doctrines of the Church. In other words, it was impossible for a single General Conference, even with the agreement of the ministry in the Annual Conference to amend the First Restrictive Rule. Consequently some have in-

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ferred that there is no way of changing the Restrictive Rule as to standards of doctrine. This, however, is a mistake.

By the constitution of 1808, the Annual Conferences and the next succeeding General Conference could amend or eliminate the First Restrictive Rule or any other restriction. By the provision of 1832, the first rule was excepted from the process by which the other regulations could be amended; but this did not make it absolutely impossible to change the restriction as to standards of doctrine. The intentions of the makers of the new provision was to protect the doctrines from hasty change by making the process of amendment more lengthy and difficult than in the case of the other restrictions.

The new provision for amendment created a double process. First, it would be necessary to amend the provision for amendment by striking out the words "excepting the first article." This, according to the constitution, could be done by the action of the ministers in the Annual Conferences and the concurrence of the next General Conference, or by the action of two-thirds in the next General Conference and the concurrence of three-fourths in the Annual Conferences. If this was agreed to, then the first restriction would no longer be an exception, and it could be amended, just as any other restriction.

In this way it might be possible to change the restriction as to standards of doctrine within the period of two General Conferences, or four years. Thus a General Conference might recommend the striking out of the words "excepting the first article," and the ministers in the Annual Conferences the next year might concur. This being done, the words would be eliminated. Then the next year an amendment to the first restrictive rule might be passed around the Annual Conferences, and agreed to by the requisite three-fourths vote, and if the next General Conference concurred by a two-thirds vote, the amendment would be affected.

Anderson, James A. "The Proposed Constitution," the *Methodist Quarterly Review*, Vol. 79, (1930), pp. 178-79.

It seems to us that the simplest and most sensible change to make is to strike out the clause exempting the first Restrictive Rule, leaving this Rule where all the others are, subject to change by a two-thirds vote of the General Conference and a three-fourths vote of all the members of the Annual Conferences. Surely this is protection enough for anything. Moreover, Methodist standards of doctrine are not so easily alterable as some might imagine; for these standards do not consist of a set form of words to be verbally accepted as is the case with Romanism. It were a sad day if we should ever make them a set form of words, for it would bind us to a dead past, as the Roman Church is now bound. What we really have is a small body of writings, not the Twenty-five Articles alone, but also Wesley's Sermons and Wesley's Notes, all exponential of a spirit, a life, and experience of divine grace, which is the one thing that has always

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been and ever must be the chief concern of our Methodism. This makes of our standards a living spirit, and not a dead formula, delivering us from creedal idolatry, on the one hand, and doctrinal tinkering, on the other hand. It is the grand peculiarity of our Methodism, and more than all else, accounts for our oneness of doctrine throughout the world, affording at the same time the best of all guarantees against any radical change. To make any substantial change at all you must abolish a whole system of things, and that is not easily done. Strike out your exempting clause, and leave the First Restrictive Rule on the same footing as the other Rules.

XIII

BRIEF AND ARGUMENT ON THE LEGAL ISSUES INVOLVED ¹

THE VALIDITY OF UNION

THE DIRECT OBJECT OF THE PINE GROVE CASE WAS TO CANCEL AND SET ASIDE the deed alienating the title to the property of the Pine Grove Church from the trustees who held it for the use of the ministry and membership of the Methodist Episcopal Church, South; to enjoin the dissident faction from interfering with the possession and use of the church property by those who adhered to The Methodist Church, and to prevent the dissident faction from using the name "Methodist Episcopal Church, South." The validity of union was incidentally, but necessarily, involved to determine the right of those adhering to the united church to the possession and use of the church property and to show their right as plaintiffs to maintain the suit.

The rule of law that the judgment of the highest judicatory of an ecclesiastical organization on an ecclesiastical question within its ecclesiastical jurisdiction will be accepted by the civil courts and applied to the civil right being adjudicated in the civil court, is as old as the early history of the Roman civil law. When Paul of Samosata, bishop of Antioch, added to corruption in office certain teachings regarding the doctrine of the Trinity deemed to be heretical, he was degraded from his office by a council of bishops. He appealed to the Emperor Valerian, who referred the matter to the bishops of Italy, and "as soon as he was informed that they had unanimously approved the sentence, he acquiesced in their opinion and immediately gave orders that Paul should be compelled to relinquish the temporal possessions belonging to an office of which, in the judgment of his brethren, he had been deprived." ²

¹ The brief and argument here given is a condensation of the voluminous briefs filed by counsel at the several hearings during the progress of the litigation, and does not cite all of the cases cited in the briefs and the arguments.

² Edward Gibbon, *The Decline and Fall of the Roman Empire*, I, xvi.

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This rule of law was first clearly established in American jurisprudence by the Supreme Court of South Carolina in the case of *Harmon v. Dreher*,³ decided in 1843, in which the court held that:

It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority. *The judgments, therefore, of religious associations, bearing upon their own members, are not examinable here. . . .* I have stated the facts, and I have stated the judgment rendered on the facts and *that judgment must be conclusive here.*

Such judgments are in this sense advisory, that they are addressed to the conscience of those who have voluntarily subjected themselves to their spiritual sway; and except where *civil rights are dependent upon them*, can have no influence beyond the tribunal from which they emanate.

Where a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. The civil tribunal tries the civil right and no more, taking the ecclesiastical decisions, out of which the right arises, *as it finds them. Neither can this court look into the regularity of the process by which the synod proceeded to judgment. Every competent tribunal must of necessity regulate its own formulas.*⁴

The principles on which the case of *Harmon v. Dreher* were decided were followed by the Supreme Court of South Carolina in the case of *Wilson v. Presbyterian Church of John's Island*,⁵ decided in 1846, and were later followed by that court in the case of *Morris Street Baptist Church v. Dart*,⁶ decided in 1903.

In the case of *Watson v. Jones*,⁷ decided by the Supreme Court of the United States at the December term, 1871, in the opinion that court, as summarized in the headnote, held:

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations between

*Spear's Eq. (S. C.), 67

³2 Rich. Eq. (S. C.), 192.

⁴Italics supplied.

⁵67 S. C. 338; 45 S. E. 753; 100 Am. St. Rep. 727.

⁷13 Wall. 679; 20 L. Ed. 666. See also *Brown v. Clark*, 116 S. W. 360; 24 L. R. A. (NS) 670; *Mack v. Kime*, 129 Ga., 1; 58 S. E. 184; 24 L. R. A. (NS) 675; *Tucker v. Paulk*, 148 Ga., 228; 96 S. E. 339; *Gibson v. Singleton*, 149 Ga. 502; 101 S. E. 178; *Hall v. Henry*, 159 Ga. 80; 124 S. E. 883; *McCluskey v. Rakestraw*, 164 Ga. 30; 137 S. E. 394; *Ramsey v. Hicks*, 91 N. E. 344; 30 L. R. A. (NS) 665; *Brundage v. Deardorf*, 92 Fed. 214; *Wilson v. Presbyterian Church of John's Island*, *supra*.

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church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding upon them in their application to the case before them.

In deciding this case, the court cited cases from the Scottish courts in support of the rule of decision adopted by it and, in addition, the case of *Harmon v. Dreher*, which, it said, was one of the "most careful and well considered judgments on the subject."

The rule of law being as stated above, and the constitution and jurisdiction of the Judicial Council being admitted, there was no way in which the defendants could question the conclusiveness of its decision except for fraud, collusion, or arbitrariness. The decision was not attacked for fraud or collusion, but it was sought to construe it as arbitrary.⁸

A decision is arbitrary if it clearly violates the law it professes to administer, or is in conflict with the laws of the land.⁹ The defendants based their contention that the judgment of the Judicial Council was arbitrary (1) because, as they contended, the adoption of the Plan of Union involved a change in the Twenty-third Article of Religion and violated the constitution of the church because it was adopted without the concurrence of each Annual Conference; (2) because it changed the method by which the Articles of Religion could be changed without a majority vote in each Annual Conference; (3) because the Plan of Union was adopted without submission to a vote of the members of the local congregations; (4) because the question of the adoption of the Plan of Union was not properly submitted to the Annual Conferences; (5) because the delegates to the Uniting Conference were not properly elected; and (6) that the leaders of the church by a "conspiracy of silence," prevented a free and fair discussion of the question when the Plan of Union was before the Annual Conferences.

At the time of union, the Twenty-third Article of Religion appeared in the *Disciplines* of all three uniting churches in identical language:

⁸ *Gonzales v. Roman Catholic Archbishop*, 280 U. S., 1; 74 L. ed. 131.

⁹ *Krecker v. Shirey*, 163 Pa., 534; 29 L. R. A. 476; *Mack v. Kime*, 129 Ga., 1.

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The president, the congress, the general assemblies, the governors, and the councils of state, *as the delegates of the people*, are the rulers of the United States of America, according to the divisions of power made to them by the constitution of the United States, and by the constitutions of their respective states. And the said states are a sovereign and independent nation, and ought not to be subject to any foreign jurisdiction.¹⁰

In the *Discipline* of the Methodist Episcopal Church there was the following footnote to the Twenty-third Article:

As far as it respects civil affairs we believe it the duty of Christians, and especially of all Christian Ministers, to be subject to the supreme authority of the country where they may reside, and to use all laudable means to enjoin obedience to the powers that be; and therefore it is expected that all our Preachers and People, who may be under the British or any other Government, will behave themselves as peaceable and orderly subjects.¹¹

In the *Discipline* of the Methodist Episcopal Church, South, the footnote to the Twenty-third Article was in the following language:

It is the duty of Christians, and especially of all Christian ministers, to observe and obey the laws and commands of the governing or supreme authority of the country of which they are citizens or subjects, or in which they reside, and to use all laudable means to encourage and enjoin obedience to the powers that be.¹²

There was no footnote to the Twenty-third Article in the *Discipline* of the Methodist Protestant Church.

The Uniting Conference adopted the footnote to the Twenty-third Article as it appeared in the *Discipline* of the Methodist Episcopal Church, South, as the footnote of the united church, and it so appears in the *Discipline* of The Methodist Church.

The argument of the defendants, who asserted the invalidity of the union, was that the footnotes of the Methodist Episcopal Church and of the Methodist Episcopal Church, South, were parts of the Twenty-third Articles of their respective churches, and as the Methodist Protestant Church had no footnotes, there was no Twenty-third Article of Religion held in common by the three uniting churches, and that to

¹⁰ *Discipline of the Methodist Episcopal Church, South*, 1934, Par. 29.

¹¹ *Discipline of the Methodist Episcopal Church*, 1932, Footnote to Par. 23.

¹² *Discipline of the Methodist Episcopal Church, South*, 1934, Footnote to Par 29.

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adopt either of the footnotes would change the Twenty-third Article as to the other two churches. The argument of the plaintiffs, who asserted the validity of union, was that the two footnotes were merely explanatory of the duty imposed on all Christians everywhere to be obedient to the laws of the land where they reside, and that there was absolutely no difference in substance in the two footnotes and that, therefore, no change was made by the adoption of the literary form of the footnote of the Methodist Episcopal Church, South. Furthermore, the defendants were all members of the Methodist Episcopal Church, South, and it did not lie in their mouths to complain, if the other two churches accepted a form of an Article of Religion to which they had always professed allegiance. The insubstantial nature of this objection to the adoption of the Plan of Union was so patent that no further argument was necessary on this point. The question, therefore, was whether it required the vote of each of the Annual Conferences, or a three-fourths vote of all the members of the several Annual Conferences. So far as this question was concerned, while interesting historically, it was academic and moot.

The argument that the adoption of the Plan of Union was illegal and void because it provides a different method of changing the Articles of Religion, which could not be done except by a majority vote of each Annual Conference, was vigorously pressed by the defendants.

The Plan of Union provided that:

Amendments to the Constitution shall be made upon a two-thirds majority of the General Conference present and voting and a two-thirds majority of all the members of the several Annual Conferences present and voting, except in the case of the first Restrictive Rule, which shall require a three-fourths majority of all the members of the Annual Conferences present and voting.

If the defendants had been right in their contention that the proviso of 1832 left the amendment of the First Article of the Restrictive Rules under the proviso of 1808, that is, that the First Article could be amended only by a majority vote of each Annual Conference, then their contention that the church could not do by indirection what it could not do directly—that is, adopt, under the method of the proviso

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of 1832, a new method of changing the First Article and then use that new method to change the First Article—there would have been great force in their argument. But the weight of the authority and evidence was that the proviso of 1832 was adopted as a substitute for the proviso of 1808, and left the First Article with no method provided for its amendment, and subject to the power of the General Conference to provide a method for its amendment, which the General Conference did through the method provided for adopting the Plan of Union. This was the decision of the Judicial Council and its decision was final.

The defendants strenuously argued that the constitution of the church had become fixed by the action of the General Conference of 1906 in ordering the editor of the *Discipline* to add to the proviso at the end of the Restrictive Rules, after the words “excepting the first article,” the words “which may be altered upon the joint recommendation of all the Annual Conferences by a majority of two-thirds of the General Conference succeeding.” The defendants contended that the adoption of the resolution providing for this emendation of the *Discipline*, and the failure of the bishops to arrest the passage followed by the subsequent actions of the General Conferences enumerated by Bishop Collins Denny in his testimony, and the failure of the bishops to arrest, amounted to nine judicial decisions fixing the constitution of the church.

This matter was thoroughly gone into by the Judicial Council which, upon a review of the historical evidence, found that the interpolated words had never, since the adoption of the proviso of 1832, been a part of the constitution of the church, and that the action of the conference of 1906 was an attempt by legislative action to amend the constitution without resorting to the constitutional process of a reference to the Annual Conferences, and, therefore, the action of the conference of 1906 was unconstitutional and void, and no length of acquiescence could make it constitutional. As was aptly said by Colonel Jaynes in his learned and exhaustive brief in this case:

It is significant that all the extensive research of Bishop Collins Denny has failed to discover any historical data showing or tending to show that by mistake or oversight this clause was omitted from the *Discipline* of

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1832 or any *Discipline* of the church prior to 1906. And yet his deposition in this case embraces nearly 200 pages and includes 126 exhibits of historical data extending as far back as 1796.

Moreover, this contention of the defendants brought into consideration the nature and extent of the judicial power of the bishops, prior to the vesting of the judicial power in the Judicial Council. As was clearly elucidated in the testimony of Bishop Moore, the judicial power of the bishops was simply the power of the bishops to veto or arrest legislation deemed by them unconstitutional during the session of the General Conference at which the legislation was enacted, and was forever lost by their failure to arrest it by the adjournment of the conference at which it was passed. If, through inattention or ignorance, they failed to test the unconstitutionality of the legislation at the time, their power to correct it was gone. It has never been held that if a governor fails to veto unconstitutional legislation that his failure validates it, or precludes the courts from holding it unconstitutional when called to decide upon its constitutionality. After the adjournment of the General Conference of 1906, there never was any tribunal in the church competent to pass upon the constitutionality of the legislation until it was brought before the Judicial Council in 1938. Even if the "nine judicial decisions" had been, in fact, judicial decisions, they were subject to be overruled by the Judicial Council on reconsideration. The decision of the Supreme Court of the United States in the case of *Swift v. Tyson*¹³ was followed by that court and by the inferior Federal courts for ninety-five years until it was overruled in the case of *Erie Railroad Co., v. Tompkins*.¹⁴

Even if the method of amending the Restrictive Rules contained in the Plan of Union had been unconstitutional, it is a familiar and universally accepted rule of statutory construction that if the provisions of a statute contain some provisions which are constitutional and others which are unconstitutional, if the constitutional portions are capable of enforcement, the whole act will not be declared unconstitutional.¹⁵ The fact of union was not affected by the change in the method pro-

¹³ 16 Pet., 1.

¹⁴ 304 U. S. 64; 82 L. ed. 1188.

¹⁵ Black's *Constitutional Law* (2nd. ed.), 64.

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vided by the Plan of Union for altering the Articles of Religion, and the legality of the fact of union will stand whether the method provided for altering the Articles of Religion was, or was not, constitutionally adopted.

When a change is proposed to be made under the method contained in the Plan of Union, the rights of former members of the Methodist Episcopal Church, South, adhering to The Methodist Church, will be for the first time impinged, and the constitutionality of the changed method can then be called in question by them. But in that event, the matter will no doubt be held to be *res adjudicata* on account of the decision of the Judicial Council.

The Methodist Church was not in its origin a democracy, and The Methodist Church is not now, nor were the Methodist Episcopal Church or the Methodist Episcopal Church, South, ever democracies in which the members ever had the franchise to vote directly on any matter of legislation or the constitutional structure of The Methodist Church. In constitutional organization and structure, The Methodist Church is very similar to the Presbyterian Church. Both are connec-tional churches, with a supreme legislative body with a series of inferior judicatories. These several judicatories are not exactly similar in function in the two churches, but are sufficiently alike in jurisdiction and function to make the same principles of law applicable to both. The supreme legislative body in the Presbyterian Church is the General Assembly, corresponding to the General Conference in The Methodist Church. In the Presbyterian Church the Session has jurisdiction over certain affairs of the local church, corresponding somewhat to the Quarterly Conference in The Methodist Church. The Presbytery corresponds to the District Conference, and the Synod to the Annual Conference. In both churches the rights and privileges of the members come down to them from above. The government of The Methodist Church differs from the government of the United States under the Constitution, wherein all the rights and powers of the general government were granted to it by the states or the people, whereas all the rights of the members of The Methodist Church are granted by the sovereign power of the general church, and the members

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have no governmental powers not granted to them. The argument that the adoption of the Plan of Union was void, had no foundation in any law, custom, or usage of the church. This contention of the defendants was based on an erroneous assumption of the fact that the division of the church in 1844 was upon the authority of elections held in the local congregations. As was held by the Supreme Court of the United States, in *Smith v. Swormstedt*,¹⁶ the division of the church in 1844 was made by the General Conference. This was a territorial division, and elections were held by the Annual Conferences along the border line, not to determine whether the division would be made or not, but to determine with which division of the church they would go. Votes were taken in some—perhaps many—congregations in the South merely to express their approval of the division. These votes were not taken in pursuance of any call for such a vote. The results were never canvassed or consolidated, and, in effect, they were mere straw votes without any legal force.

The vote of the Annual Conferences on the question of the adoption of the Plan of Union was taken on the following question prepared by the College of Bishops:

Shall the Annual Conferences of the Methodist Episcopal Church, South, approve and authorize the adoption of the Plan of Union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, as proposed and recommended by the Commission on Interdenominational Relations and Church Union, duly appointed by the General Conference of these three churches and attached thereto?

Defendants' counsel made the contention that the evidence failed to show "what Plan of Union was attached to the resolutions acted upon by the annual conferences at the time they voted on the question formulated for the submission of the Plan of Union." The evidence showed that the proposed Plan of Union was published in all the *Advocates* of the church and that it was widely discussed. No other plan of union was being proposed for adoption at the time. Every member of the Methodist Episcopal Church, South, is sup-

¹⁶ 16 Howard 288, 14 L. Ed. 942; see also *Bascom v. Lane*, Fed. Cas. 1089; *Gibson v. Armstrong*, 46 Ky. (7 B. Mon.) 481; *Brooke v. Shacklett*, 13 Gratt. (Va.) 301.

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posed to have known that union of the three churches was to be voted upon. The same objection was made to the adoption of union in the Presbyterian controversy. In the case of *Barkley v. Hayes*,¹⁷ the same point was made and disposed of. In that case the plan was submitted to the Presbyteries in a letter from the moderator, in which reference was made to the minutes of the last General Assembly, that that body had "submitted to the Presbyteries a proposition pertaining to the union and reunion" of the two churches and "this proposition is to be put before the Presbytery in the following form," which was followed by this question and commentary:

Do you approve of the union and reunion of the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church on the following basis: The union shall be effected on the doctrinal and ecclesiastical standards, and the Scriptures of the Old and New Testaments shall be acknowledged as the inspired word of God, the only infallible rule of faith and practice?

To this question the Presbytery is to give a categorical answer. While your vote is to be taken simply on this question, your action thereon will mean the acceptance or rejection of the entire plan, embracing the basis of union, concurrent declarations and recommendation without amendment or alteration in any part.

The court disposed of the contention that the question did not include everything in the plan, saying:

It is agreed that the categorical question thus submitted for answer did not include that the churches should be united as one church under the name and style of the Presbyterian Church in the United States of America; that the presbyteries voted only on the doctrinal basis. Even if this were true, it would scarcely be sufficient to defeat the union as a whole. The name to be borne by the united church was of secondary importance. It must be assumed that the church would have some name. If there were an entire change in name, that that of the Cumberland Church would obviously be abandoned. That if the name of either of the churches entering the union were to be retained, it would hardly be anticipated that that of the parent church with its 1,300,000 communicants would give way to the smaller organization with less than 200,000. But I am of opinion that *the entire plan was submitted by this categorical question and the circular letter which placed it before the presbyteries. . .*¹⁸

¹⁷ 208 Fed. 319.

¹⁸ Italics supplied.

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The practice of submitting long and involved propositions in abbreviated form by categorical questions to be answered "Yes" or "No" is very common. As was well said in *Sanders v. Baggerly*, 96 Ark. 117:

It is conceivable that the ministers and members composing the presbyteries did not understand, when they voted an answer to the letter of the Moderator and stated clerk, that they were approving or disapproving the whole plan of union on the basis of taking the name and adopting the doctrinal and ecclesiastical standards of the Presbyterian Church? We think not. . . .

The proceedings were not conducted along technical lines, and should not be subjected to a technical scrutiny which would defeat the obvious intention of those who participated. The presbyters are presumed to have been men of at least average intelligence; and it is also presumed that they possessed themselves of all the facts concerning the whole plan of union and the effect of the votes cast. *Nothing, it seems to us, could be plainer than the manner in which the plan was submitted, and we are unwilling to say that it was, or could have been, misunderstood by the members of the presbyteries. We say that the whole plan was submitted to and adopted by the presbyteries.*¹⁹

The objection that the evidence failed to show "what Plan of Union was attached to the resolutions" voted on by the Annual Conferences, besides being flatly disproved by the testimony of Bishop Moore, was, under all the evidence, absurd in its implication that the Annual Conferences did not know what they were voting on.

The evidence was that the existence and nature of the plan was so widely diffused before the meetings of the Annual Conferences that twenty-five out of the thirty-eight Annual Conferences requested the bishops to formulate a question upon which they could vote at their 1937-38 meetings, and reference to the question already quoted will show that the Plan of Union was specifically identified in the question as the plan "proposed and recommended by the Commission on Interdenominational Relations and Church Union, duly appointed by the General Conference."

The defendants, in their answer to the plaintiffs' complaint, made the remarkable allegation that no Uniting Conference was ever held,

¹⁹ Italics supplied.

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and therefore union never became effective. In the brief of defendants this allegation was disclosed to be founded on the fact that in the election of delegates to the Uniting Conference by the Annual Conferences, the delegates were elected by "orders," that is, the clerical delegates were elected by the clerical members and the lay delegates by the lay members. The General Conference merely provided that the delegates should be elected by the Annual Conferences. The contention of the defendants was that an election by "orders" was not an election by the Annual Conferences, therefore no delegates were elected; and consequently no Uniting Conference was constituted by the presence and participation in the assemblage of the so-called delegates.

When laymen were admitted into the Annual Conferences and into the General Conference, it was provided in the law of the church that the election of delegates to the General Conference should be elected by "orders," for the obvious purpose of providing that there should be the same proportion of ministerial and lay delegates in the General Conference as in the Annual Conferences. If this law had not been passed, in an Annual Conference where there was a preponderating majority of either order, all the delegates might have been elected from that order. Certainly the reason for the law applied as strongly to the election of delegates to the Uniting Conference as to the election of delegates to the General Conference. The obvious contention of defendants' counsel, was that the Uniting Conference was not a General Conference but was *sui juris*. According to Bishop Moore, it was a General Conference of the three churches, legislative in its nature. In other words, it was a combined General Conference of the three churches exercising the powers of the General Conference of the individual General Conference upon the specific subjects provided to be acted upon by it under the provision of the Plan of Union. Bishop Moore did not express himself in that exact language, but that was the obvious meaning of his testimony. In any view of the matter, the delegates from the Methodist Episcopal Church, South, went to the Uniting Conference certified as delegates from the Annual Conferences purporting to have elected them, were seated as delegates, participated in the proceedings, and the actions of the Uniting Conference were afterwards ratified by all of the

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Annual Conferences which thereafter dissolved as Annual Conferences of the Methodist Episcopal Church, South, and re-organized as conferences of The Methodist Church.

Another objection to the validity of the processes by which union was accomplished, alleged in defendants' answer and urged in the brief of counsel, was that the leaders of the church, by a "conspiracy of silence" and by the discouragement of discussion of the Plan of Union when it was before the Annual Conferences to be voted upon, prevented a full, free, and fair discussion of the Plan of Union. They emphasized the fact that there was less discussion and agitation over the last Plan of Union than over the plan of 1924-25. This fortunately was true. The agitation over the former plan grew to be somewhat bitter and did harm. The only evidence of any action by the leaders of the church to minimize discussion of the last plan was that the bishops, by a tacit agreement among themselves, refrained from entering too prominently into a public discussion of the plan and the question of unification. They did not, and could not, prevent anybody from discussing the plan who wished to discuss it. The bishops simply left the people to make up their own minds whether they wished unification or not. This did not prevent the opponents of unification from speaking and agitating against it. The opponents formed an organization known as the "Layman's Organization for the Preservation of the Southern Methodist Church," and published a periodical in the form of a small magazine which was widely circulated and rabidly opposed union. Bishop Denny addressed public meetings in opposition to union in Virginia, South Carolina, Georgia, Alabama, and Tennessee, and notwithstanding all this agitation and public discussion by the opponents, unification was approved by a majority vote in every Annual Conference except one. The fact that the friends of unification were less inclined to enter the pre-campaign discussion of the Plan of Union, was a strange reason for voiding the election approving it. There is no record of anyone successful in an election being deprived of the fruits of his victory because he did not hire a hall and harangue the voters.

This disposes of the main contentions of the defendants that the

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civil court should regard the judgment of the Judicial Council as arbitrary and go behind it. Only two of the contentions—that the Plan of Union changed the Twenty-third Article of Religion and that it changed the method of changing an Article of Religion—were argued before the Judicial Council. Certainly nothing showed that the judgment of the council was fraudulent, collusive, or arbitrary.

Another contention that the judgment of the Judicial Council was reviewable by the civil courts, not based upon its arbitrariness, was that it was not an ecclesiastical decision of the character which is immune from review of the civil courts, because it was not a decision upon a question of “creed, doctrine, or teaching,” but was a decision upon a matter of procedure, which the defendants contended was not within the exclusive jurisdiction of an ecclesiastical court. The plaintiffs contended that an ecclesiastical question, in the narrow sense, is one relating to doctrine and discipline. But it also includes the power to decide “on the proper mode of procedure, and to determine conclusively the regularity and validity of the proceedings had to effect the desired object.”²⁰

The case of *Brundage v. Deardorf*, 92, *Fed.* 214, is a most enlightening case on the exact point we are now discussing, that an ecclesiastical question includes questions of procedure and church polity as well as questions of doctrine, dogma, discipline, and creed. This case involved a question of amending the constitution of the United Brethren in Christ.

The constitution provided for amendment on the approval of two thirds of the members of the society. The General Conference, after securing the preparation of a plan of amendment, provided that it should be submitted to a vote of all the members of the society, and that a two-thirds majority of those voting should be taken as the approval of two thirds of the membership. Only about one fourth of the total membership of the society voted, but more than two thirds of those voting voted in favor of the amendment. At a subsequent General Conference, the matter was referred to a committee, in its

²⁰ *Mack v. Kime*, 129 *Ga.*, 1; *Ramsey v. Hicks*, 91 *N. E.*, 344; *Brundage v. Deardorf*, 92 *Fed.* 214.

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nature a judicial council, which reported that the proposed changes in the constitution had been duly approved, and the report of the committee was adopted by the conference.

Certain dissenters attempted to take charge of Fairview Church, one of the churches of the society. Those adhering to the church, as represented by the General Conference, brought a bill for injunction in the Circuit Court of the United States for the Northern District of Ohio. The case was carried on appeal to the Circuit Court of Appeals for the Sixth Circuit. That court, in an opinion written by Judge Horace H. Lurton, later a justice of the United States Supreme Court, held:

The decisions of the supreme judicatory of a religious society of the associated class having a constitution, and governed by local, state and national bodies of all questions of ecclesiastical cognizance, are binding and conclusive on all of the members, and cannot be reviewed by the civil courts.

The following excerpt comes from the body of the opinion:

What effect will a civil court give to the interpretation and construction by the highest judicatory of an ecclesiastical body of its own fundamental law? Is that judgment subject to review in the civil court? Or, will the civil courts accept the interpretation placed upon the organic law of the church by its highest judicatory, and apply the law as interpreted to the settlement of property questions depending upon that law? As we have already stated, the property here involved was not devoted by the express terms of any grant, gift, will or sale to the support of any specific religious dogma, doctrine or belief, but is property acquired by the church for the general use of the society for religious purposes, and with no other limitation. The property here in question is held for the particular use of a congregation, which is only one of numerous others united to form a general body of churches, and subject to the ecclesiastical control of the general conference, whose jurisdiction extends to all congregations composing the general body. The question here is merely one of identity—which of the two bodies claiming to be the legitimate successor of the original united organization is the legal successor of the body to which this property was conveyed? When this question is answered, the property must be awarded to that organization. The decision of this question involves the interpretation of the organic law of the church in respect to the appropriate method of altering or amending that law. But the fundamental law has been construed, interpreted and applied by the highest judicatory of the church before its division, and the very changes in the constitution and confession now complained of as irregular and revolutionary sanctioned and approved

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as having been made in accordance with the method prescribed by the fundamental law of the church for its own amendment. Shall we review that decision and overturn its conclusiveness upon questions purely relating to ecclesiastical law and government, and take from the majority the general property of the church upon some difference of opinion as to whether the highest authority within the church had not mistaken the meaning of the church's organic law? The question is not an open one in courts of the United States. It is the duty of this court to accept that decision as final and as binding upon it in so far as that decision has application to the case for decision.

We submit that if the supreme judicatory of the United Brethren in Christ could conclusively decide the constitutional question that two thirds of those voting at an election met the requirement of the constitution of the society, that "there shall be no alteration of the foregoing constitution unless by a request of two-thirds of the whole society," the finality of the decision of the Judicial Council of the Methodist Episcopal Church, South, in deciding the disputed question whether the adoption of the Plan of Union required a majority vote of each Annual Conference, or a vote of "three-fourths of all the members of the several Annual Conferences, who shall be present and vote on such recommendation," is not open to debate. No issue is raised over the creation, organization, or jurisdiction of the Judicial Council, nor over the manner of the submission to it of the question of the legality of the adoption of the Plan of Union. *The judgment of the council affirming the legality of the adoption of the Plan of Union by the General Conference of the Methodist Episcopal Church, South, is, therefore, a final and conclusive foreclosure of the regularity of the proceedings and the validity of the action of the General Conference in adopting said plan.*

In *Ramsey v. Hicks*, it was held that:

If church judicatories proceed palpably without jurisdiction and their action is clearly *ultra vires*, neither the church membership nor the civil courts should respect their decisions; but when the matter in controversy is purely of ecclesiastical cognizance and the church tribunal proceeds in manifest good faith under color of authority, as well as upon subsidiary questions, it is binding upon the civil courts. . . .

Objection is made to the validity of the union because of the failure to submit to the presbyteries the agreement that by the merger the Cumberland name was to be surrendered and the name of the Presbyterian Church

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adopted for the consolidated body. If it be conceded, as it is by all the civil courts which have considered the question, that the General Assembly and presbyteries had jurisdiction over the subject of making a union with another church, then, as the supreme executive, legislative and judicial authority in the church, under our view of the law, the General Assembly *had power to decide on the proper mode of procedure, and to determine conclusively the regularity and validity of the proceedings had to effect the desired object.*²¹

The plaintiffs naturally leaned heavily on the case of *Watson v. Jones*, which followed the case of *Harmon v. Dreher*, in holding that the civil courts must accept as final an ecclesiastical court upon an ecclesiastical question. The defendants questioned the soundness of the decision in *Watson v. Jones*, citing the following excerpt from the opinion of Judge William H. Taft in *Brundage v. Deardorf*,²² while a circuit court judge, in Ohio:

Even if the supreme judiciary has the right to construe the limitations of its own power, and the civil courts may not interfere with such a construction and must take it as conclusive, we do not understand the Supreme Court in *Watson v. Jones* that an open and avowed defiance of the original compact, will be taken as a decision of the supreme judicatory which is binding on the civil courts. Certainly, the effect of *Watson v. Jones* cannot be extended beyond the principle that a bona fide decision of the fundamental law of the church must be recognized as conclusive by the civil courts. Clearly it is not the intention of the court to recognize as legitimate the revolutionary action of a majority of a supreme judiciary in favor of the rights of a minority seeking to maintain the integrity of the original compact. This is the case stated by the bill, as I understand it, and in such a case the language of Mr. Justice Miller does not cover. No other case than *Watson v. Jones* need to be considered, because in no other case has the conclusive effect of the judgment of the supreme judicatory of the church been so strongly stated. If that does not control this case, no other authority brought to my attention does.

This decision by Judge Taft was not universally accepted by the courts. The dictum quoted above was repudiated by the Sixth Circuit Court of Appeals in 1899, in the case of *Brundage v. Deardorf*,²³ which said:

²¹ 174 Ind. 428; 92 N. E. 344; 30 L. R. A. (NS) 665. Italics supplied.

²² 55 Fed. 839.

²³ 92 Fed. 214.

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Manifestly, the general powers of the Conference authorized it to construe the amendatory provision and to provide the details by which this power of amendment might be exercised. The duty of interpreting and applying this provision of the organic law of the church was necessarily within the implied powers of the General Conference as the highest judicatory and legislative body of the organization.

The United Brethren controversy found its way into eight state courts and two courts in Ontario. All the courts, except Michigan, held that the amendment of the church constitution and revised confession of faith had been legally adopted and were valid.

The defendants' criticism of *Watson v. Jones* amounts to this: That the rule announced in that case, that the judgment of an ecclesiastical court must be accepted as conclusive by the civil courts, should have been qualified by an exception of those ecclesiastical decisions which are arbitrary and which uphold steps taken

which clearly indicate an abandonment of the original aims and purposes of the organization, and use it for ends which were not expressly contemplated, and, under no reasonable construction of the rules could ever have been contemplated.

It is not to be presumed that the Supreme Court in *Watson v. Jones* intended to validate ecclesiastical decisions patently arbitrary and revolutionary, or that it occurred to the court to say that it did not do so. But the criticism of the decision of *Watson v. Jones*, made by the defendants for failing to express such a qualification, was a *brutum fulmen* in the Pine Grove case. The decision of the Judicial Council was not arbitrary, and the reunion of the Methodist Episcopal Church, South, with the Methodist Episcopal Church, from which it divided when both churches had the same Articles of Religion, the same form of organization, and practically the same *Discipline*, by no process of reasoning can be considered as revolutionary or "an abandonment of the original aims and purposes of the organization."

Defendants' counsel not only criticized the opinion in the case of *Watson v. Jones* for legal unsoundness, but attacked it as an arbitrary decision stemming from sectional prejudice. In the defendants' brief they say:

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We focus attention on the fact that the Southern element in *Watson v. Jones* took the position that the Presbyterian Church of the United States of America through its General Assembly, was not empowered to adopt the action taken in May of 1865, namely, that before a Southerner might become a minister or member of that church, inquiry should be made into his sentiments in regard to loyalty to the Federal Government and on the subject of slavery, and if it should be found that he had been loyal to the South and to the view of slavery held by the South, he should be required to repent and forsake these sins before he could be received.

Thus in the heat of reconstruction, the Supreme Court had before it the right of the General Assembly to compel a Southerner, before he could be admitted to the church, to renounce as a sin the whole governmental and economic foundation upon which he and his section had lived and for which the Southerner had fought so magnificently. The General Assembly had said in an *ex parte* proceeding that it had that right. One does not have to be blessed with great imagination to conceive the howl of fury that would have arisen in the North had the court held that the Northern Presbyterian Church to its own law, or had it upheld the Southern element by stating that the point had already been decided in connection with the same congregation by the highest court of Kentucky, and it therefore could not consider the case.

This argument that the rule of *Watson v. Jones* sprang out of sectional prejudice, besides being of questionable professional propriety, is absurd in view of the judicial history of the rule. The rule first found clear announcement in substantially the exact form in which it is stated in *Watson v. Jones*, in the South Carolina case of *Harmon v. Dreher*, decided in 1843, and *Wilson v. Presbyterian Church of John's Island*, decided in 1846, two decades before Reconstruction. It was followed by more than a dozen state courts and by several federal courts; was reaffirmed by the Supreme Court of South Carolina in *Morris Street Baptist Church v. Dart*, in 1907; and was reaffirmed *in toto* by the Supreme Court of the United States in the case of *Shepard v. Barkley*, decided in 1918—the opinion being written, not by a prejudiced Northerner, but by a former Confederate soldier from Louisiana, Chief Justice Edward D. White.

THE TRUE CONGREGATION OF THE PINE GROVE CHURCH

The rules of law governing the case, the evidence supporting the validity of union, and the insubstantial nature of the objections

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urged against it, compelled the conclusion that the union of the three churches was valid, and that thereby The Methodist Church became the legal and ecclesiastical successor of the Methodist Church, Episcopal, South, and, as such, entitled to all the property, property rights, powers, and privileges of that church. Union being valid, it followed that those members of the Pine Grove Church who adhered to the united church were the true congregation and entitled to the possession and use of the church property.

In *Harmon v. Dreher*, it was held that:

If a portion secede, and the rest however small their number adhere, the adherents, by their fidelity, secure their corporate existence, and are entitled to all the privileges of the corporation.

THE PROPERTY QUESTION

It has been through control over ownership and use of local properties of the church under the trust clause in the deed to local church properties that the Methodist churches have preserved their connectional solidarity, the itinerant system, and have almost completely prevented schisms in local churches and in their general organizations.

As far back as 1739, John Wesley, in all deeds to his Methodist chapels or preaching houses, had written a provision placing the power to appoint all preachers, first in himself, and afterwards in the British Conference. In this country the necessity for such clauses was recognized.

The fee of land is vested in trustees, who hold the property in behalf of each respective society. The General Conference claims merely the right to supply the pulpit, by such means as it shall elect, with only accredited ministers and preachers. The *Journal* of the General Conference of 1796 explains:

The union of the Methodist Society through the states requires one general deed, for the settlement of our preaching houses and the premises belonging thereto. . . . But the preservation of our union, and the progress of the work of God, indispensably require that the full and free use of the pulpit should be in the hands of the General Conference and yearly conferences authorized by them. Of course the traveling preachers who are in full connection, assembled in their conferences, are the patrons of the pulpits

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of our church. And this was absolutely necessary to give a clear, legal specification in the deed. . . .

[and] we do hereby publicly declare, that we have no design of limiting in the least degree the privileges of any of the public officers of our society, but by this deed solely intend to preserve the property of our church by such a clear, simple specification as shall be fully and easily cognizable by the laws.²⁴

For some years during the early existence of the Methodist Church in America, a very long and involved trust clause was inserted in in the deeds of the local church properties. This trust clause, by an evolutionary process, was revised, changed, and abbreviated, until it took the short form in use by the Methodist Episcopal Church, South, at the time of union. In the writer's opinion, the legal import of the original trust clause was somewhat changed in this process, and especially by the short form. It was provided in the *Discipline* of the Methodist Episcopal Church, South, that the trust clause should be inserted in every "charter, devise, deed, or conveyance, for any house of worship to be used by us"—so as to secure the property in fee simple, to the *Methodist Episcopal Church, South*. The clause itself was in this form:

In trust, that said premises shall be used, kept, maintained, and disposed of, as a place of divine worship for the use of the ministry and membership of the Methodist Episcopal Church, South; subject to the discipline, usage, and ministerial appointments of said church, as from time to time authorized and declared by the General Conference of said church, and by the Annual Conference within whose bounds the said premises are situated.²⁵

The trust clause in this form had appeared in the *Discipline* of the Methodist Episcopal Church, South, for many years before its union with the Methodist Episcopal Church and the Methodist Protestant Church. It appeared in substantially the same form in the *Discipline* of the Methodist Episcopal Church, and appears in the *Discipline* of the united church in almost the exact words in which it appeared in the *Discipline* of the Methodist Episcopal Church, South.

This trust clause was contained in practically all of the deeds under which local houses of worship of the Methodist Episcopal Church,

²⁴ *Manual of the Discipline of the Methodist Episcopal Church, South*, pp. 112-13.

²⁵ *Discipline of the Methodist Episcopal Church, South*, 1934, Par. 242.

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South, were held. In the few cases where the trust clause was not fully stated, or was stated imperfectly, but not contrary to the terms of the disciplinary trust clause, the legal effect was the same as if the full trust clause had been specifically used. Moreover, in a deed to a local church of a particular denomination, that is, to a local church of that denomination, without an express trust clause, a trust clause will be implied to the same effect as the usual trust clause in use by the denomination to which the local church belongs.²⁶

The members of a local church of the Methodist Episcopal Church, South, derive no particularly proprietary interest or exclusive beneficial ownership directly from a deed to local church property, except that the church is located in their community and is a convenient place at which they may worship and receive the ministrations of a pastor sent to them under the authority of the General Conference. And while all of their rights and the protection of their beneficial interest in the property are derived from the provisions of the *Discipline* and the fact that the property can be disposed of only under the conditions and in the manner provided in the *Discipline*, for their protection and for the protection of the church as a whole, it is submitted that the members of the local church are not the sole beneficiaries under such a trust deed, and that every member of the general church has a beneficial interest in the property of every local church.

There has been some doubt and dispute as to whether the beneficiaries of a deed to a local house of worship, under the Methodist trust clause, are the persons composing the membership of the entire denomination, or whether the beneficiaries are the members of the local church. But a solution of this question was not material to a decision of the Pine Grove case, as the question concerned the power of the alienors of the property to alienate it, and which faction among the members of the Pine Grove Church was entitled to the use and control of it.

Bishop Denny's theory of local church ownership was that the

²⁶ *Wilson v. Presbyterian Church of John's Island*, 2 Rich. Eq. (S.C.), 192; *Brown v. Clark*, 102 Texas 323; 116 S. W. 360; 24 L. R. A. (NS) 670; *Gibson v. Trustees of Pendecar Presbyterian Church*, 10 At. (2nd), 332.

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sole beneficiaries of a trust deed to local church property are the members of the local congregation. He is supported in his theory by Professor Carl Zollmann, who, in his exhaustive treatise on American church law, says:

By the great weight of authority a deed in the Methodist Episcopal form is a valid instrument fully capable of accomplishing the purpose for which it has been devised. Its beneficiary is not the general Methodist Episcopal Church named in it, but the local congregation for whose immediate use and through whose financial efforts the property covered by it has been acquired. Adherence to the general body on the part of the local congregation, however, will be necessary under the deed, as the local congregation can preserve its identity only by such means. . . . Even a majority of such local congregation cannot carry the property over to the part which has seceded from such general body. The means by which adherence to or rejection of the authority of the general body on the part of any local congregation will definitely be decided will be the acceptance or rejection of the minister assigned to such local body by the general body.²⁷

Notwithstanding the eminence of these great authorities, their theory is one with which the writer is unable to agree as to the deed to the property of a local church, under the form of trust clause which was in the *Discipline* of the Methodist Episcopal Church, South, at the time of union.

Of course the state has the right to control the ownership and the devolution of property—especially real estate—but where the state has not exercised this right to the contrary, an ecclesiastical organization can adopt its own rules defining the interest of members in church property and its disposition. It is universally held that when a member of a church withdraws from it, he loses all the interest which he had in the church property. If every member of a local congregation withdraws, there is then no local congregation to be the beneficiary of it. In such case, the law of The Methodist Church is that the property can be sold by the trustees under the authority of the Quarterly Conference, and the proceeds invested in other church property. If there are no trustees, it can be sold under the authority of the Annual Conference. The Annual Conference is not a lawmaking body, and its authority is derived from the legislation

²⁷ Zollmann, Section 583.

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of the General Conference. If the General Conference has the power to authorize the Annual Conference to sell abandoned church property, it follows that it has the authority to direct the disposition of the proceeds of such sale, and can direct that the proceeds of such sale be turned over to the Board of Church Extension, or any other of the boards or commissions of the church. It is submitted, therefore, that the ultimate beneficiary of local church property is not the local congregation, but that the property is connectional, and that the ultimate beneficiary is the general church.

Attention has already been called to the provision in the *Discipline* requiring the use of the trust clause that it was required "so as to secure the property in fee simple, to the Methodist Episcopal Church, South." What is the "Methodist Episcopal Church, South"? It is certainly not any particular local congregation. The persons who devised the present form of trust clause were certainly men skilled in the use of language, and they intended that the words used should have their commonly accepted meaning. The meaning of the words "ministry" and "membership" is significant. Webster defines "ministry" as "ministers of religion, collectively; the clergy." The words, "for the use of the ministry . . . of the Methodist Episcopal Church, South," therefore mean the body of ministers of the general church collectively. The use of the word "membership" is likewise a collective term used in a collective sense. The "membership of the Methodist Episcopal Church, South" is certainly not the members of a local church. To understand that these words were not carelessly used, and that the distinction between local and general use was understood, it is only necessary to consider the trust clause in a deed to a parsonage, which is "In trust, that such premises shall be held, kept, maintained, and disposed of, as a place of residence for the use and occupancy of the preachers of the Methodist Episcopal Church, South, who may from time to time be appointed in said place . . ."

The Presbyterian deed to local church property, which does not differ substantially from the deed which was in use by the Methodist Episcopal Church, South, has been held to vest the beneficial title in the general church. It was held in *Barkeley v. Hayes*, that:

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A member of the Presbyterian Church or of the Cumberland Presbyterian Church, under their form of organization has no individual ownership in any of the property of the church which has been purchased or conveyed for the general use of the congregation which uses it, but the same is vested in the general church, which through its general assembly has the ultimate power of control, although the conveyance may have been made to the trustees of the particular congregation.

It is the writer's opinion that the opinion in *Barkley v. Hayes* states the true rule of construction which should apply to the Methodist church deed. No other construction seems logically consistent with the connectional nature and purposes of the church. Bishop Moore testified that "you cannot have a congregation without a building." You certainly cannot have a church without a congregation, and the general church is nothing but the aggregate of the local congregations. It is from the activities of the local congregations that the general church derives the income from which it supports the great common enterprises of the church—its orphanages, its missionary work, the support of the episcopacy, and other general works of the church.²⁸

The defendants, under their theory that the sole beneficiaries of a deed to the trustees of a local church, are the members of the local church, contended that less than the whole board of trustees acting under the authority of a so-called Church Conference, could, by a majority vote of such conference, convey the church property to new trustees under a trust clause vesting the title in such new trustees for the use of the "present and future members" of the local church, and then refuse to accept the pastor assigned to the church under the authority of the General Conference and the Annual Conference in whose bounds the local church was situated.

The Pine Grove Church property was deeded by W. J. Gamble to certain trustees in 1877 "in trust as trustees for the Methodist Episcopal Church, South . . . to have and hold all and singular the above described plot of land in trust for said church as a church lot."

In 1897 W. D. Gamble, his son and only heir, deeded the same property to certain persons, describing them as

²⁸ See testimony of Bishop Moore and Dr. Garber, pp. 138-40, 159, 194-95.

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the Board of Trustees of the Methodist Episcopal Church, South. . . . for the use and benefit of the public worship of God, to be applied by the said trustees to the object herein stated under the direction of the General Conference of the Methodist Episcopal Church, South, and the said trustees are to have and to hold the property for the use aforesaid.

The trust clauses in these two deeds were not in the exact form of the disciplinary trust clause, but, under the decisions already cited, they were of the same legal effect. Under the disciplinary trust clause, the trustees of local church property hold it "subject to the discipline, usage, and ministerial appointments" of the church. The *Discipline* provides that local church property can be sold only when it has gone out of use or when it is intended to remove the church to a new location, and then only under the authority of the Quarterly Conference and with the consent of the preacher in charge. Under these disciplinary provisions, the trustees held the title to the Pine Grove property with a power of sale subject to a condition; that is, that the property could be sold only when it had gone out of use, or when the church was to be moved to a new location, conditions which did not exist when the alienating deed was made, and that, if they had existed, it could have been sold only under the consent of the Quarterly Conference and with the consent of the pastor, which the alienating trustees did not have. Nor was it within the power of a Church Conference to authorize or validate a conveyance of the property.²⁹

While the question whether the members of a local Methodist church are the sole beneficiaries of local church property held under the Methodist trust clause, or whether the ultimate beneficiaries are the members of the denomination had material bearing in the Pine Grove case on the question whether the members of a local congregation could change the terms of the trust clause under which the local house of worship was held, jurisdiction did not depend on this question in either the Pine Grove case or in the Federal case, because the Pine Grove case was between members of that local

²⁹ *Discipline of the Methodist Episcopal Church, South*, 1934, Par. 248; *Discipline of The Methodist Church*, Pars. 781, 782; 49 Corpus Juris, Title "Powers," p. 2106, Par. 129; *Bredenburg v. Bardin*, 36 S. C. 197; 15 S. E. 373.

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church, and in the Federal case the general properties of the denomination were involved, which supported jurisdiction.

THE USE OF THE NAME “METHODIST EPISCOPAL CHURCH, SOUTH”

The plaintiffs, in their complaint, alleged

that to The Methodist Church now belongs the legal title to the names, the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, and that because of long and honored use and association these titles are enshrined in the histories and records of Methodism and are to be carried perpetually in the Discipline of the constituent churches of The Methodist Church,

and that members withdrawing from The Methodist Church and organizing a new unaffiliated religious society had no right to adopt as its name, “Methodist Episcopal Church, South,” or any other name of like import, or similar to, or imitative of, or a contraction of such name, and prayed:

That it be adjudged that to The Methodist Church now belongs the legal title to the name “Methodist Episcopal Church, South,” and that defendants and all persons in like situation be enjoined from the use of said name or other name of like import.

The defendants, in their plea and answer, denied any right in the merged church in the names formerly held by the uniting churches upon the grounds: (1) that in adopting the name “The Methodist Church,” the uniting churches had abandoned their old names; (2) that a religious society had no right to enjoin another from the use of a name it is not using; (3) that it was not within the jurisdiction or power of the Uniting Conference to make the reservation of the right in the names of the uniting churches which it attempted to make in the Declaration of Union; and (4) that the law of unfair competition in the use of names does not apply to religious societies. Furthermore, the defendants denied that the religious society which they were propagating was a new society, and claimed the sole right to use the name “Methodist Episcopal Church, South,” upon

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the theory that union was invalid and that they were still members of that organization.

The plaintiffs founded their argument upon the proposition that the union of the churches was valid and that The Methodist Church, as the successor of the uniting churches, became the owner of all of the property, property rights, powers, and privileges of the Methodist Episcopal Church, South, and that the name was a property right. Lord Blackburn in a leading case said:

I think it is settled by a series of cases in which *Hall v. Barrows* is, I think, the leading case, that both trade-marks and trade names are in a sense *property*, and the right to use them passes with the goodwill of the business to successors of the firm that originally established them, even though the name of that firm be changed so that they are no longer strictly correct. This was evidently Lord Collenthams's opinion in *Millington v. Fox*, and I know of no authority to the contrary.³⁰

The Supreme Court of Georgia held that a fraternal order which was benevolent in its nature, but which had acquired property for its benevolent purposes, acquired *a proprietary right in the name by which it was known and under which it operated*.

In the case of *Purcell v. Summers*,³¹ the Circuit Court of Appeals, in passing upon the question whether the jurisdictional amount was involved, after calling attention to the property owned or held by The Methodist Church, said:

And aside from the value of the church properties affected by the schism the *right involved in the use of the name of one of the great religious bodies merged by the union has a value*, because of its association and background and the loyalties attaching to it, *of many times the jurisdictional amount prescribed by statute*.³²

To meet the argument that the names of the uniting churches were property rights which passed by virtue of union to the successor church, the defendants contended that by taking another name and ceasing to use the old names, the names formerly held by the

³⁰ *Singer Manufacturing Co., v. Loog*, quoted in *Nims on Unfair Competition and Trade Marks*; L. R. A. 8 App. Cas. 15-1882; 18 Ch. Div. 395-1880. Italics supplied.

³¹ 126 Fed. (2d) 390.

³² Italics supplied.

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uniting churches were abandoned. The plaintiffs contended that the united church had neither abandoned nor ceased to use the old names. An abandonment is "*an intentional relinquishment of a known right, the intention to be ascertained from the conduct and declarations of the party in respect thereto . . .*"³³

That the uniting churches did not *intend* to abandon their old names is shown by their solemn action in expressly declaring to the contrary in the Declaration of Union proclaimed by the Uniting Conference, and by the use of the old names in the *Discipline* of the united church as subtitles to the name "The Methodist Church." But the defendants argued that the reservation of title to the names of the constituent churches was not within the jurisdiction or powers of the Uniting Conference under the Plan of Union, and that its action in this respect was *ultra vires* and void. This argument was based upon a mistaken construction of the express and implied powers of the Uniting Conference conferred upon it by the Plan of Union. Among other powers conferred on the Uniting Conference was the power:

To provide a plan for the control and safeguarding of all permanent funds *and other property interests of the three churches*, and the interests of those persons and causes for which these funds were established.³⁴

Besides being property interests in themselves, which the Uniting Conference was under the duty to safeguard, the names of the uniting churches were so related to the physical properties of the church that it was necessary to safeguard the title to the names in order to protect the physical properties. The titles to practically all of the local church properties were held by trustees for the use of the churches bearing these names, and these titles were registered on the public records in those names. Several of the boards handling large funds were chartered in the name of the Methodist Episcopal Church, South. The confusion and the cloud which would have been cast upon the titles to church property held under such deeds, if another religious society should adopt and use the name in titles

³³ Moore v. United Elkhorn Mines, 7 Pac. 964; Hough v. Porter, 98 Pac. 1083, 1107; "Restatement of the Law of Torts," Amer. Law Institute, Comment b, Sec. 752. Italics supplied.

³⁴ Italics supplied.

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to its property and should organize boards using that name, is too obvious for argument.

As long as the titles to local church properties of The Methodist Church are held under titles to trustees for the use of the Methodist Episcopal Church, South, and as long as boards of the church continue to function under charters incorporating that name, The Methodist Church has not abandoned the names of its constituent churches nor ceased to use them.

But this does not end the argument. Where a proprietary interest has been acquired in the use of a name, even if the user adopts a new name and continues the same enterprise under the new name, the ceasing to use the old name does not give the right to anyone else to adopt and use the old name in a similar enterprise. But the defendants sought to avoid this rule of law and equity by the contention that when the Methodist Episcopal Church, South, entered the union, it "quit business" and ceased to exist. This contention was made in the litigation over the merger of the Cumberland Presbyterian Church with the Presbyterian Church in the U. S. A., and was overruled in every court of last resort in which it was made. The Supreme Court of Indiana held:

The assumption that a union, consolidation, merger, or whatever it is pleasing to term the action in question, is the equivalent of a death and the cessation of the organic functions of the church is fallacious. Every congregation, presbytery, and synod. . . will continue its existence and accustomed work without interruption. The manifest purpose of the union being not death, but a larger life. . . .³⁵

The Supreme Court of California, in passing upon the contention that by the union the Cumberland Church was annihilated, held:

No such consequence ensued. Each particular church, each presbytery and each synod established by the Cumberland Church, retains its individual and separate integrity and existence and its property rights, until and unless some change is made by the regular authorities of the united church. . . . The entire church continues to exist not separately and distinctly, indeed, but in union and association with the other church. The same is true of the Presbyterian Church. The united church exists in continuity with and as successor of both former churches.³⁶

³⁵ *Ramsey v. Hicks*, 174 Ind. 428; 91 N. E. 344; 30 L. R. A. (NS) 665.

³⁶ *Permanent Committee of Missions v. Pac. Synod*, 157 Cal. 105.

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When the Methodist Episcopal Church, South, entered the union, it ceased to exist as a separate identity, but it did not die. It continued to live in association with the other two churches.

The contention that the uniting churches, the Uniting Conference, and The Methodist Church had no power or right to safeguard the names of the uniting churches to keep them from being used as instruments of unfair competition, is untenable. Churches may suffer from unfair competition in the same manner as business enterprises—perhaps more so. They are, in a degree, business enterprises, for they cannot live by faith alone, but must have material income to carry on their missionary, eleemosynary, and educational enterprises. The various denominations have peculiar creeds and standards of doctrine and conduct, and their reputations can be injured by organizations operating under the same name, whose methods of operation and teachings they cannot control.

The fact that a corporation is an eleemosynary or charitable one and has no goodwill to sell, and does not make money, does not take it out of the law of unfair competition. Distinct identity is just as important to such a company, oftentimes, as it is to a commercial company. Its financial credit, its ability to raise funds. *Its general reputation*, the credit of those managing and supporting it, are all at stake, if its name is filched away by some other organization.³⁷

The same thing is true of churches. In a case where a faction split off from a church and attempted to organize under a similar name, the court held that:

The close similarity raises an inference resulting in confusion. This confusion is bound to result to the disadvantage of the plaintiff. When we say disadvantage, we are not restricting ourselves to the spiritual side alone. We are aware that churches are established for the promulgation of faith under the regulations of definite religious organizations; but we are also aware that such organizations, through some administrative channels, own property, real and personal, and require funds to carry on their purposes. These funds come from contributions, gifts, donations and bequests. No large church organization could operate on faith alone, and if its income were stopped or materially reduced, its scope for spreading its religion, as enunciated by its doctrines, would be seriously hampered. Thus, any project or movement by another religious organization using a name so similar to an established one as to create confusion and thereby interfering with

³⁷ Nims on *Unfair Competition and Trade Marks* (3rd. ed.), 240. Italics supplied.

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the spiritual and financial progress of that established church and its agencies is inequitable and will be restrained.³⁸

Under the proof that the defendants were members of the "South Carolina Conference of the Methodist Episcopal Church, South," which was actively engaged in the organization, propagation, and extension of a church or religious society under the name "Methodist Episcopal Church, South," in the same territory formerly occupied by that church and claiming, in fact, to be a continuation of that church, plaintiffs insisted that such use of the name, "Methodist Episcopal Church, South," should be enjoined.³⁹

³⁸ *Masters v. Machen*, Court of Common Pleas No. 5, County of Philadelphia, Pa.

³⁹ *Benevolent & Protective Order of Elks v. Improved Benevolent & Protective Order of Elks of the World*, L. R. A. (1915B) p. 1074; *Creswill v. Grand Lodge Knights of Pythias of Georgia*, 133 Ga., 837; *Knights of the Ku Klux Klan v. Independent Klan of America*, 11 Fed. (2d) 881; *Salvation Army in United States v. American Salvation Army*, 120 N. Y. Supp. 741, on page 745; *Society of the War of 1812 v. Society of War of 1812 in the State of N. Y.*, 62 N. Y. Supp. 355, (46 App. Div. 569); *Brooklyn Hebrew Home for the Aged v. Brooklyn Hebrew Home for the Aged & Infirm*, 192 N. Y. Supp. 301; *International Committee of Young Women's Christian Association v. Young Women's Christian Association, Inc.*, 22 Ohio App. 300; *National Circle Daughters of Isabella v. National Order, Daughters of Isabella*, 270 Fed. 723; *Independent Lodge of the World, Loyal Order of Moose v. Improved Benevolent Protective Order of Moose of the World*, 123 At. 532; *Talbot v. Independent Order of Owls*, 220 Fed. 660; *Lane v. Evening Star Society*, 100 Ga., 355; *Home Machine & Fdy. Co. v. Davis Machine & Fdy. Works*, 135 Ga., 18; *Industrial Inv. Co. v. Mitchell*, 164 Ga., 437; *Planters Fertilizer & Phosphate Co. v. Planters Fertilizer Co. (S. C.)* 133 S. E. Rep. 706; *Hudson Tire Co. v. Hudson Tire & Rubber Co.*, 276 Fed. 59; *Wm. A. Rogers, Ltd. v. H. O. Rogers Silverware Co.*, 237 Fed. 887.

XIV

THE REFEREE'S REPORT

IN A LENGTHY AND ABLE OPINION, THE REFEREE UPHELD THE VALIDITY of union, found that the faction in the Pine Grove Church which adhered to the united church was entitled to the use and control of the church property, and that the alienating deed was void and should be canceled. But the referee found that the united church was not entitled to enjoin the use of the defendants of the name "Methodist Episcopal Church, South." This report is too long to be included here, nor is this necessary. The validity of union was not in question after the confirmation of the referee's report, and the affirmance by the Supreme Court of South Carolina and the decision by the United States District Court. After these decisions, the only issue on appeal to the Circuit Court of Appeals was on the right to enjoin the use of the name. On that issue the referee found:

The claim to the exclusive right by the merged church to the title and use of the names of the three churches of which it is the successor, appears first to have been made at the Uniting Conference held in Kansas City in May, 1939. I find no provision in the Plan of Union nor do I find any action in this regard was taken at the General Conference of the Southern Methodist church which adopted the Plan of Union. The claim first appears in the "Declaration of Union" adopted by the Uniting Conference, Par. IV of which reads as follows:

The Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, in adopting the name "The Methodist Church" for the United Church do not and will not surrender any right interest or title in and to these respective names, which, by long and honored use and association, have become dear to the ministry and membership of the three uniting churches and have become enshrined in their history and records.

A just criticism of this declaration is that it is inaptly phrased. While it is doubtless true that the ministers and members of each

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of the merged organizations have a strong feeling of affection for their "old" church, there is nothing in the history of the three churches, as it has been outlined in this case, that indicates that either one of them held dear or had enshrined in its own history affectionate associations with the history of the other. The testimony shows that the Methodist Protestant Church owed its existence to a schism in the church, and the other two organizations arose out of a most bitter controversy which resulted in the separation of the old Methodist Church into two hostile parts. Moreover, the import of the "Declaration" is that the three churches are simply adopting a new name, whereas the entire purpose of the Plan of Union and of the remainder of this "Declaration" is to create one united church. It will be further observed that the "Declaration" does not purport to be the act of the Uniting Conference but is the declaration of each of the three churches.

I can find no authority for this action of the Uniting Conference. None of the three churches had taken any such independent action nor had they in the Plan of Union adopted such a declaration. The Plan of Union simply declares that the three churches "shall be united in one church" and that the name of the church "shall be The Methodist Church." The Plan of Union contained not only the declaration of faith and the rules and regulations under which the three churches were to be merged, but set out in detail the procedure concerning the Uniting Conference and specifically and definitely limited its powers. The care with which the procedural portion of the plan was observed indicated a recognition of the importance of observing its limitations.

I find that the declaration referred to, so far as it undertakes to prevent by others the use of the name of the Methodist Episcopal Church, South, is *ultra vires* and void.

No great reliance on this "Declaration" appears to have been made in the arguments submitted, but rather the contention seems to be that the merged church has the inherent right to forbid others from using the names of the churches which have gone into the merger or names of similar import, and to obtain injunctive relief from a court of equity in support of this right.

It is of course true that where an organization, whether business, religious, fraternal, or social, has adopted and used a certain name and established itself under that name, the court will protect it in the use of that name and will enjoin the use of the same or a name of similar import by another organization. This is based on the principle that the use by another of a similar name is likely to lead to confusion

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in the public mind and cause misunderstanding and damage. There is no necessity to refer to authority as to this.

This principle applies, however, where the name sought to be protected is the name being used. This is not the case here. The new church has abandoned the name which it now seeks to protect. Not only so, but it has adopted a name which has obviously been selected so that it cannot be confused with any of the old names.

As between different classes of organizations, churches differ substantially from commercial corporations and purely social or fraternal organizations as to the value and importance of their names. The names of the latter are essential for the purpose of preserving their separate identity and protecting the public from being misled or damaged. Such is by no means the case with a church. The essential of a church organization is that it is the coming together of people preferring the same mode of worshipping God. The name and the identity are incidental. *Sanders v. Baggerly*, (Ark) 131 S. W., 47.

In the case of *Ramsey v. Hicks*, (Ind), 91 N. E., 334, the question of title to the name came up in a somewhat different form, and there the opponents to the merger were the ones claiming devotion to the name "Cumberland." The court said: "The surrender of the name of the Cumberland Church, apart from sentimental considerations, was of little consequence."

It has been stated in the testimony that there are dozens of denominations using the words "Protestant," "Methodist," and "Episcopal" in various combinations, and that the word "Methodist" alone occurs in numerous divisions of the church. The mere fact, therefore, that the word "Methodist" appears in the old names, would lead to no greater confusion than now exists if these names should be used by others. Granting that technically the merged church retains certain rights in the old names for certain purposes, I can find no merit in the contention that it should have an exclusive right to these names, which it has voluntarily abandoned, nor that a court of equity should prevent persons of the same faith and former members of the same church from perpetuating their use in a separate organization.

The foregoing covers what I consider the real issues in the case. Collateral and technical issues were made in the proceeds, but I have not thought it necessary to refer them in detail, as they are disposed of in the decision on the main issues.

To sum up, I find that:

1. Prior to April 26, 1939, the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church adopted a Plan of Union and elected delegates to a Uniting

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Conference to be held for the purpose of merging and uniting the three religious organizations into one religious organization to be known at The Methodist Church.

2. The Uniting Conference was held in Kansas City, Missouri, in April and May, 1939, pursuant to the Plan of Union, and unanimously voted that the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church be united into one united church known at The Methodist Church.

3. By virtue of the action taken at this Uniting Conference, The Methodist Church is the ecclesiastical and lawful successor of the three merged churches.

4. The Pine Grove Methodist Church of Turbeville, South Carolina, was a local unit or church of the Methodist Episcopal Church, South, from the time of its organization until the organization of The Methodist Church and was subject to the constitution and discipline of the Methodist Episcopal Church, South.

5. By virtue of the above-mentioned merger, the Pine Grove Methodist Church is, and has been from the time of this merger, a local unit or church of, and subject to, the constitution and discipline of The Methodist Church.

6. The church property which is the subject of this action is held under a deed of trust executed by W. J. Gamble on May 7, 1877, in trust for the local congregation of The Methodist Church, as successor to the Methodist Episcopal Church, South, for the use by such congregation as a place of worship according to the discipline, and subject to the constitution, rules and regulations and discipline of The Methodist Church.

7. A schism exists in the congregation of the Pine Grove Church involving no question of faith, but concerning the merger of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church; the plaintiffs in this action representing the faction adhering to the merged church and the defendants representing the faction opposing the merger.

8. On April 24, 1939, E. N. Greene, N. J. Morris and A. N. Coker, who are defendants here, executed an instrument in writing purporting to convey the property which is the subject of this action to the defendants, H. W. Cole, F. B. Thomas and W. L. Coker, as trustees, which is the deed set out as Exhibit "C" of the complaint.

9. All of these parties belonged to the faction opposing the merger and this action was taken for the avowed purpose of removing the property from the control of the merged church.

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10. On or about May 10, 1939, notice was given by the faction represented by the defendants to the pastor or preacher of Pine Grove Church, the Rev. L. D. B. Williams, which forbade him to use the church property and warned him that any such use would be a trespass, and notices were also published of a schedule of religious services to be held in the church property without the consent or approval of the pastor.

11. The defendants and others opposed to the merger have organized the "Layman's Organization for the Preservation of the Southern Methodist Church," and have been active in their opposition to the merger.

12. The grantors in the above-mentioned deed of April 24, 1939, had no power or authority to execute the deed or to transfer the property, and the deed is null and void.

13. The defendants have no individual ownership or right in the property involved in this action which is held as a place of worship, according to the discipline of the merged church, for the local congregation of that denomination.

14. Neither the plaintiffs as representing The Methodist Church, nor The Methodist Church has the right to the exclusive use of the name "Methodist Episcopal Church, South."

15. The action taken at the Uniting Conference, whereby it was declared that in adopting the name "The Methodist Church," the rights, titles, and interest in the original names was not surrendered, was *ultra vires* and void.

I therefore recommend:

That it be adjudged that The Methodist Church is the ecclesiastical and legal successor of the Methodist Episcopal Church, South, and as such has succeeded to all of the property, property rights, powers, and privileges of the Methodist Episcopal Church, South.

That it be further adjudged that the Pine Grove Methodist Church at Turbeville, South Carolina, is a local unit or church of The Methodist Church and subject to the constitution, discipline, rules, and regulations of this church.

That it be further adjudged that the property of the Pine Grove Methodist Church is held by the trustees of the church in trust for the congregation of The Methodist Church for the use of such congregation as a place of worship according to the discipline and subject to the constitution, rules and regulations and discipline of The Methodist Church.

That it be further adjudged that the deed of conveyance executed by E. N. Greene, *et al.*, to H. W. Cole, *et al.*, on April 24, 1939, and

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set forth as Exhibit "C" of the complaint is null and void, and that the recordation of the same be canceled by the clerk of this court.

That it be further adjudged that the defendants and all others claiming under or through them, be permanently enjoined and restrained from interfering with the property of Pine Grove Methodist Church at Turbeville, South Carolina, or with the congregation of The Methodist Church worshiping there.

That it be further adjudged that The Methodist Church has no legal exclusive right to the name "Methodist Episcopal Church, South," or any other name of like import [excepting the name "The Methodist Church"], and has no legal right to interfere with the defendants or others claiming under or through them in the use of such name.

The referee's report was confirmed by the Court of Common Pleas, and both sides filed exceptions. The case was carried on appeal to the Supreme Court of South Carolina, which affirmed the lower court in upholding the validity of union and in denying the injunction against the use of the name.

XV

THE DECISION OF THE SUPREME COURT OF SOUTH CAROLINA IN THE PINE GROVE CASE ¹

THE CASE WAS ARGUED ORALLY IN THE SUPREME COURT OF SOUTH CAROLINA by Hon. Henry R. Sims for the appellants, and by Collins Denny, Jr. for the appellees.

The decision reads as follows:

We are called upon in this case to determine the property rights of the plaintiffs and the defendants in connection with the lot and building of the Pine Grove Methodist Church at Turbeville, in Clarendon County, and in doing so we find that there necessarily arises for consideration the very important question of the validity of the unification of the three great branches of the Methodist faith.

After the adoption by the General Conference of the Methodist Episcopal Church, South, in April, 1938, of a plan of union with the Methodist Episcopal Church and the Methodist Protestant Church, dissension arose among the members of the Pine Grove Church as to the wisdom of the proposed unification, and the congregation became divided into two factions. One of these factions, now represented by the plaintiffs, was in favor of union; the other faction, now represented by the defendants and composed of a majority of the members of the Pine Grove Church, was opposed to unification.

Shortly before the annual meeting of the South Carolina Conference of the Southern church, eleven of the twelve stewards of the Pine Grove Church wrote the bishop in charge that the board of stewards would not go into the unified church and would make its own arrangements for a pastor.

In accordance with the rules of the church, in November, 1938, at the Hartsville conference, Bishop Purcell appointed the Rev. L. D. B. Williams as the preacher in charge of the Turbeville-Oanta circuit, which includes the Pine Grove Methodist Church. For several months after the arrival of Mr. Williams each faction separately used the church building for religious services at hours which did not conflict, the opponents of unification having other preachers. On April 24, 1939, as the time drew near for the holding of the Uniting Conference

¹ Turbeville, *et al.* v. Morris, *et al.*, 26 S. E. (2) 821.

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at Kansas City, and as it appeared evident that union would be perfected, three of the trustees of the church, the defendants, E. N. Greene, M. J. Morris and A. N. Coker, claiming to be a majority of the board, in order to keep the property from passing under the control of the unified church, executed and delivered an instrument in writing purporting to be a deed whereby they attempted to convey to the other three defendants, H. W. Cole, F. B. Thomas and W. L. Coker, as trustees, the property upon which the Pine Grove Church is located. On May 10, 1939, these three grantees notified Mr. Williams that they were assuming control and direction of the church property, forbade him to use it, and warned him that any such use would be a trespass upon their rights; and thereafter the defendants announced a schedule of religious services to be held in the church building without the consent or approval of the pastor.

This suit was instituted on May 26, 1939, by some of the officers and members of the church, on behalf of themselves and other members, by C. C. Derrick, district superintendent of the Kingstree district, and by Mr. Williams as pastor, seeking to have the deed canceled, and to enjoin the defendants in their own right and as representing all other members similarly situated from interfering with the use of the property by the plaintiffs and others in like situation. A temporary restraining order was granted by his Honor, Judge Philip H. Stoll.

A motion was made before his Honor, Judge William H. Grimbball, for an order dissolving the temporary injunction. This motion was refused, and the case was referred to the Hon. Nathaniel B. Barnwell under a general order of reference. A great deal of evidence was taken by him. He went into the matter with great care and thoroughness, and filed a comprehensive and able report. Exceptions to it were heard by his Honor, Judge Grimbball, who after full and mature consideration made a decree confirming the report.

The circuit judge and special referee held, among other things, that the purported deed of the trustees is illegal and void, and should be canceled of record; that the defendants and all others claiming under or through them should be permanently enjoined from interfering with the Pine Grove Church property or with the congregation of The Methodist Church worshipping there; that The Methodist Church has no exclusive right to the use of the name Methodist Episcopal Church, South; and that the plaintiffs are not entitled to have the defendants enjoined from using the name.

The plaintiffs except to the holding of the circuit judge as to the use of the name Methodist Episcopal Church, South. The defendants allege error in almost all of the other holdings of the circuit court.

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There is no direct exception by the defendants to the holding of the circuit court that the deed of the trustees is invalid. That decision of the court was clearly correct.

A trustee of church property ordinarily has no power to convey the trust estate unless such power is conferred by the instrument creating the trust, or under an order of court in a proper proceeding, or where duly authorized by the organic law of the religious society. *Thomson v. Peake*, 38 S. C. 440, 17 S. E. 725; *Presbyterian Church v. Donnom*, 1 S. C. Eq. (1 Des. Eq.) 154, decided in 1788, 65 C. J., 730, 54 C. J., 63.

The Gamble deed gave no power of sale to the trustees, and no court action authorized it, so we shall look to the rules of the Southern Methodist church to see what provision is there made in such cases.

Under paragraph 248 of the *Discipline* of the Methodist Episcopal Church, South, for the year 1938, the trustees of a church may convey, with the consent of the pastor in charge and of the Quarterly Conference, any church property which has gone out of use or which should be removed to another place, the proceeds to be invested in other church property under the direction of the Quarterly Conference. In this case the property has not gone out of use, and, of course, was not to be removed to another place; the conveyance was not authorized by a Quarterly Conference, and no consent was given by the pastor in charge.

The authority claimed by the trustees for executing the deed was based solely upon the action of a Church Conference which was called by a majority of the stewards pursuant to public notice, after the pastor had refused to call such a meeting. The *Discipline* of the Methodist Episcopal Church, South, sets forth in detail what business may be taken up at Church Conferences. These matters are quite limited in scope, and it is perfectly clear that a Church Conference has no power to authorize trustees to dispose of church property.

It is evident, therefore, that the defendant trustees had no authority to execute the deed, and the attempted conveyance is void and of no effect.

Although the pleadings are necessarily quite long, covering one hundred printed pages in the transcript of record, and although the testimony is voluminous, we think that a solution of the problems which are presented by the exceptions may be found in an answer to the following major questions: (1) Who were the beneficiaries under the trust deed of W. J. Gamble by which the property was originally conveyed? (2) Was unification of the three churches validly

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accomplished? (3) Is The Methodist Church entitled to the exclusive use of the name Methodist Episcopal Church, South?

With the deed held to be invalid, the situation is that we have two groups, each claiming the right to the use of the church property, and so we must turn now, under the first issue involved, to examine the trust deed which conveyed this real estate to the Pine Grove Church in order to see who are the owners of the beneficial title.

It appears that this property has been used and occupied as a church by the members of the Methodist Episcopal Church, South, for religious worship since about the year 1854. The first deed to the property, however, was on May 7, 1877, by W. J. Gamble, who conveyed to trustees "for the Methodist Episcopal Church, South, two acres of land in the State and County aforesaid where Pine Grove stands . . . To have and to hold all and singular the above described plot of land in trust for said Church as a church lot," with warranty to "the said trustees in trust for said Church forever."

Some years later, on October 16, 1897, W. D. Gamble, who was a son of W. J. Gamble, executed to the board of trustees of the Methodist Episcopal Church, South, and to their successors in office, a deed to the same land on the following trust:

For the use and benefit of the public worship of God. To be applied by the said trustees to the object herein stated under the directions of the General Conference of the Methodist Episcopal Church, South.

It does not clearly appear why the second deed was given, since the first deed creates a valid trust. The second one would seem to be of little legal effect, except possibly to confirm the earlier conveyance.

For a great many years the Methodist Church had employed a long form of trust clause in its deeds, and that form was in use in 1854, when the congregation was originally organized; but in 1870 a shorter form was adopted, and so was in force in 1877, when the first Gamble deed was executed. This short form is as follows:

In trust, that said premises shall be used, kept, maintained, and disposed of, as a place of divine worship for the use of the ministry and membership of the Methodist Episcopal Church, South; subject to the discipline, usage, and ministerial appointments of said Church, as from time to time authorized and declared by the General Conference of said Church, and by the Annual Conference within whose bounds the said premises are situated.

It is true that the deed of 1877 did not contain literally either of the approved trust clauses, yet the trust clause shows the policy of the

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church, and the deed is not repugnant to it. The trust provision in the deed will be given such construction as accords with that policy. In this case it will be given the same interpretation as would be given to a short form trust, for the reason that if a donation is made to a charitable or religious institution by which there is created no trust inconsistent with that in general use, it will be presumed that the grantor intended the property to be applied to the usual use and to the usual trust. *Wilson v. Presbyterian Church of John's Island*, 19 S. C. Eq. (2 Rich. Eq.) 192.

Such a form of trust deed and ownership of church property, safeguarding the rights of the conference which has jurisdiction over the individual congregations, is important and necessary under the Methodist polity, with its distinctive feature of an itinerant ministry.

We think, then, that the circuit Judge and the special referee properly concluded that it was the intention of W. J. Gamble that the beneficiary under his deed should be the local congregation of the Methodist Episcopal Church, South, for use by such congregation as a place of worship according to the discipline and subject to the rules and discipline of the Methodist Episcopal Church, South.

This being the case the question is, which one of the factions is the legal successor to the beneficiary under the trust deed? In determining this we should keep in mind the fact that The Methodist Church does not have a congregational or independent form of government. It is a connectional organization, with a centralized form of government, the whole church being a general unit and the local churches being parts of the larger body. The church is governed by Quarterly, District, Annual, and General conferences, in an ascending scale, and the size of a faction and whether or not it is a majority of the membership of a local congregation is not at all controlling. [Zollmann's *American Church Law*, 262.] One faction of this congregation is entitled to the use and enjoyment of the property as the true congregation of the church, for the use and benefit of which the property was originally conveyed. It is readily apparent that if the unification was validly effected, the united organization, The Methodist Church, is the lawful successor and entitled to the benefits given by the deed to the Southern church. If the unification is legal, then the members of the Pine Grove Church who stand in connection with the successor church and who are organized as members under its discipline, constitute the membership which is entitled to the use of the trust property. The plaintiffs claim that they, being the adherents of the unified church, are entitled to such use.

If, on the other hand, the merger is invalid, the Methodist Episcopal

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Church, South, still exists as before, and those who adhere to it are entitled to the use and enjoyment of the property.

This, then, brings us face to face with the question of unification, and leads us to inquire: Who is to determine whether or not the unification was validly made under church law, the civil courts of South Carolina or the Judicial Council of the Methodist Episcopal Church, South, the highest judicial body of the religious society?

Fortunately, in determining what is the law of South Carolina on this far-reaching point, we have three decisions of this court to guide us.

The first case is that of *Harmon v. Dreher*, 17 S. C. Equity (*Spear's Equity*), 87, decided in 1843. Two factions claimed that they constituted the true congregation of St. Peter's Church in Lexington County, a Lutheran congregation and a member of the synod of that church. The schism arose over the expulsion of the minister by the synod, whereupon the adherents of the minister undertook to close the church against that portion of the congregation adhering to the synod, and executed a deed attempting to vest the title of the property in their own faction.

In the course of the opinion the court said:

The bearing of the case, is to elicit a judgment, which of the parties is the true church of St. Peter's as incorporated. Each party claims an exclusive right.

It belongs not to the civil power to enter into or review the proceedings of a Spiritual Court. The structure of our government has, for the preservation of Civil Liberty, rescued the Temporal Institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority. The judgments, therefore, of religious associations, bearing upon their own members, are not examinable here; and I am not to inquire whether the doctrines attributed to Mr. Dreher, were held by him, or whether, if held, they were anti-Lutheran; or whether his conduct was, or was not, in accordance with the duty he owed to the Synod, or to his denomination. I have stated the facts, and I have stated the judgment rendered on the facts, and that judgment must be conclusive here.

Where a civil right depends upon ecclesiastical matter, it is the civil Court, and not the ecclesiastical which is to decide. The civil tribunal tries the civil right and no more, taking the ecclesiastical decisions, out of which the right arises, as it finds them. . . . Neither can this Court look into the regularity of the process by which the Synod proceeded to its judgment. Every competent tribunal must of necessity regulate its own formulas.

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If a portion secede, and the rest, however small their number, adhere, the adherents, by their fidelity, secure their corporate existence, and are entitled to all the privileges and property of the corporation.

The court further said that under the law of the Lutheran Church the synod is required to notify the congregation of the expulsion of their pastor, and if the congregation continued to employ him, the synod might cut the congregation off. As this notification had not been given, the bill was dismissed.

The next decision, in the year 1846, is that of *Wilson v. Presbyterian Church of John's Island*, 19 S. C. Equity (2 Rich. Equity), 192. This case also dealt with two groups in dispute as to which was entitled to certain church property which had been obtained through different sources and held under various trusts. The church had been connected with the presbytery in South Carolina, but about 1838 the presbytery followed the example of the national body, dividing into adherents of the so-called old and new school. A portion of the congregation, desiring to have nothing to do with the controversy, declared the church to be an independent institution, while the minority of the congregation recognized by the presbytery and the General Assembly of the old school, claimed that it constituted the true Presbyterian Church of John's Island, and brought this suit to determine its rights to the funds and property of the church. The court, in discussing the case, said:

The court disclaims, altogether, any authority to decide on questions of religious faith, or on the fitness and propriety of the forms of government which a church or congregation may adopt, if it inculcates nothing that is prohibited by law or subversive of good morals.

Within this rule, every society or association, whether the object be religious or secular, has the right to adopt such rules for its government, as to them shall seem best fitted to attain the ends of its institution.

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I have before disclaimed the authority of the Court to examine into the religious faith of anyone, for that he must account to another tribunal, but what he has publicly said or done, is capable of being proved without resorting to machinery of an inquisition to extort it from him; and I apprehend that where the right of property depends upon the existence or non-existence of the fact, the civil tribunals must of necessity examine into it.

A more recent case, in 1903, is that of *Morris Street Baptist Church v. Dart*, 67 S. C. 338, 45 S. E. 753. This was a suit by the church to prevent the defendant from attempting to exercise his function as the alleged

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pastor of the church. The plaintiffs contended that the defendant had been regularly dismissed. This the pastor denied, and claimed that he was supported by a majority of the members of the church.

The court said:

Before entering upon the consideration of the questions of fact involved in the appeal, it is necessary to determine the extent to which this Court as a civil tribunal can interfere in this unfortunate church controversy.

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The civil Courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil Courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty untrammelled by state authority. On this principle, the action of church authorities in the disposition of pastors and the expulsions of members is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view, nevertheless, the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it. Therefore, where it is admitted, as in this case, that property belongs to a particular church, and the only question is whether the defendant claiming to be pastor should be excluded from its use, this Court will only consider whether the church has ordered his exclusion, not whether it was right in doing so. Neither will the Court as a civil tribunal undertake to determine whether the resolution directing exclusion was passed in accordance with the canon law of the church, except in so far as it may be necessary to do so in determining whether it was, in fact, the church that acted.

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The only questions, then, we have power to consider are, did the congregation meet, and did it depose the defendant as pastor?

The rule announced by the Supreme Court of the United States is in substantial accord with that of the South Carolina cases. A leading and widely cited case is that of *Watson v. Jones*, 13 Wallace, 679, 20 L. Ed.. 666, decided in 1872. In reaching its decision the Federal Supreme Court quotes from and relies strongly upon the case of *Harmon v. Dreher*. Two groups formed in the congregation of the Third or Walnut Street Presbyterian Church, of Louisville, Kentucky, and both claimed the exclusive use of the church property.

The court stated:

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In this class of cases we think the rule of action which should govern the civil Courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a prepondering weight of judicial authority is, that, whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

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The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general associations, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular Courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, The Methodist Episcopal, and the Presbyterian Churches) has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of Discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil Courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. it would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.

The doctrine laid down in the *Watson* case was reaffirmed by the United States Supreme Court in 1918 in the case of *Shepard v. Barkley*, 247 U. S. 1, 62, L. Ed. 939, 38 Sup. Ct. 422.

In *Gonzales v. Roman Catholic Archbishop*, 280 U. S. 1, 74 L. Ed. 131, 50 Sup. Ct. 5, the United States Supreme Court declared:

In the absence of fraud, collusion or arbitrariness, the decisions of the proper Church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular Courts as conclusive, because the parties in interest made them so by contract or otherwise.

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From these cases it clearly appears that matters of a purely ecclesiastical nature are to be determined by church tribunals alone; and matters purely of property rights by the civil courts alone; and we agree with the circuit judge and the special referee that in South Carolina the courts of law in considering a civil right which is dependent upon an ecclesiastical matter will accept as final the decision of a legally constituted ecclesiastical tribunal having jurisdiction of the matter.

The decree and report accurately hold, also, that this acceptance is not a "blind or perfunctory" one. While not inquiring into the wisdom or correctness of ecclesiastical decisions, the court will make sure that the civil right is in fact dependent upon an ecclesiastical matter; it will determine whether the ecclesiastical body had jurisdiction; it will look to see if the steps required by the religious society have been taken; and will inquire into any charges of fraud, collusion, or arbitrariness. It will go no further.

In the present case it is clear that the civil rights of the parties with reference to the church building and grounds are dependent upon an ecclesiastical matter, namely, which faction is the true congregation of the church. That depends upon questions of church law and government.

It is equally clear that the Judicial Council of the Methodist Episcopal Church, South, had jurisdiction to hear and determine this matter. For some time in the past, the College of Bishops exercised a right, during the sessions of the General Conference, to arrest legislation of the conference which they deemed unconstitutional, this being somewhat in the nature of a veto power. In the year 1934 the church established the Judicial Council as a supreme body to pass upon all questions of constitutional law which might be referred to it. The validity of unification, and the constitutionality of the steps taken to perfect it, were duly referred to the Judicial Council by more than the required one third of the College of Bishops.

We turn, then, to the exceptions of the defendants in which they contend that certain required steps have not been taken, and for a proper understanding of these exceptions it is necessary that we give a condensed statement of the procedure of unification, as developed in the testimony before the referee.

In 1934 the General Conference of the Methodist Episcopal Church, South, appointed a commission, which met with similar commissions of the Northern church and the Methodist Protestant Church, and on August 16, 1935, there was formulated a plan of union for submission to the three churches. The General Conferences of both the Methodist Episcopal Church and the Methodist Protestant Church met in 1936

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and approved the plan, which was then submitted to the respective Annual Conferences of these churches and approved by them.

The General Conference of the Methodist Episcopal Church, South, did not meet until May, 1938, and at the 1936 sessions of the Annual Conferences of this church twenty-five out of the thirty-eight conferences adopted resolutions expressing their desire to vote on the Plan of Union at the 1937 Annual Conferences, and asked the bishops to formulate a "common question" on the Plan of Union to be put before the 1937 conferences. The College of Bishops at a meeting held in Nashville, Tennessee, May 1, 1937, formulated the following form of question:

Shall the Annual Conferences of the Methodist Episcopal Church, South, approve and authorize the adoption of the Plan of Union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church as proposed and recommended by the commissions on interdenominational relations and church union duly appointed by the General Conferences of these three churches, and attached hereto?

The Plan of Union was voted on by all thirty-eight of the Annual Conferences. Thirty-seven of them voted in favor of the adoption of the Plan of Union. One Annual Conference, the North Mississippi Conference, voted against approval by a vote of 125 to 117. The total vote of all the members of the conferences was 8,897, of which 7,650 votes were for the approval, and 1,247 against the approval of the plan. The vote of the Annual Conferences was officially reported to the succeeding General Conference which was held in Birmingham, Alabama, and the Plan of Union was then brought before the conference and adopted by a vote of 434 to 26.

After the adoption of the Plan of Union by the General Conference its legality and validity was referred to the Judicial Council of the church. Interested parties were given the right to submit objections, and formal hearings were had. An elaborate opinion was delivered by the Judicial Council, with the unanimous concurrence of its nine members, sustaining the validity of the union, and the following judgment or conclusion was rendered:

First. The actions of the members of the several Annual Conferences in approving the Plan of Union and authorizing its adoption, as reported to this General Conference, were and are legal.

Second. The action of the General Conference in ratifying and adopting the Plan of Union was and is legal.

Third. The action of the General Conference in approving and authorizing the union of the Methodist Episcopal Church, South, with the Methodist

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Episcopal Church and the Methodist Protestant Church was and is legal.

Fourth. The union of the three churches and the Plan of Union have been legally adopted, and the union has been legally authorized in accordance with said Plan of Union.

After the ruling of the Judicial Council, the College of Bishops made a "Declaration" to the conference on May 4th, 1938, in which, after reciting the action of the Annual Conferences and of the General Conference, it was declared that the Plan of Union had been legally and constitutionally adopted by the Methodist Episcopal Church, South.

The delegates from the Annual Conferences to the Uniting Conference were elected in due time, and this Uniting Conference met in Kansas City in May, 1939. All Annual Conferences of the Methodist Episcopal Church, South, including the North Mississippi Conference, were represented at the Uniting Conference and a "Declaration of Union" was adopted by a unanimous vote.

Pursuant to authority given in the Plan of Union, the Uniting Conference called upon the Annual Conferences to meet. Sessions of all of the thirty-eight Annual Conferences were held, including the North Mississippi Conference. At each of these conferences, resolutions were adopted which recognized the union of the three churches as an accomplished fact and then adjourned *sin die*.

We shall take up now the exceptions of the defendants relating to procedure.

In the fourth exception it is claimed that the court was in error in admitting in evidence certain original certificates executed by the officers of the several Annual Conferences, showing that the form of question prepared by the College of Bishops was submitted to and acted upon by each of the conferences.

At the beginning of the hearings, the parties entered into a stipulation that the printed *Journals* correctly set forth the actions taken at the several Annual Conferences, and that either party should have the right to introduce in evidence any portions of them without further proof, and that such portions should be conclusively accepted as the action of the conference. When the plaintiffs offered the *Journals* in evidence the defendants objected to them on the ground that they did not show what plan of union was voted upon. The plaintiffs then offered in evidence the original certificates signed by the presiding bishop and the secretary of each one of the Annual Conferences, from the records of the secretary of the College of Bishops at Nashville, showing that the question formulated by the bishops had been acted upon by each conference. The defendants objected to them, contending that such evidence was in violation of the stipulation. The special

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referee overruled the defendants' objection and admitted the certificates.

In this decision we think that the referee and trial judge were correct. We do not understand the stipulation to be that the action of an Annual Conference is to be determined exclusively or only by the printed *Journals*, but rather that any excerpt or portion of the *Journals* offered in evidence would be conclusive in the sense that it could not be contradicted. They were conclusive as to what they showed, but we do not think that the stipulation would prevent proof by official records of matters which in no way altered or contradicted the *Journals*. The *Journals* showed that all of the Annual Conferences had voted in one way or another on the question of union, but the secretaries did not copy in the minutes, word for word, the text of the Plan of Union. Under the stipulation, the fact that union had been voted upon was conclusive and could not be contradicted. The certificates, official records made at the time, showing just how the question of union had been voted upon, would not, we think, be in contradiction of the *Journals* but would show matters as to which they were silent or incomplete. The testimony was consistent with the *Journals*, and so did not violate the stipulation. 60 C. J. 74, 80, 84.

In the fourteenth exception the defendants say that the evidence does not show that the Northern church and the Methodist Protestant Church adopted the Plan of Union. Here we have the concurrent findings of fact of the referee and the trial judge, and a review of the evidence convinces us that this finding has ample support in the testimony.

Under the well-settled rule concurrent findings of fact of the Referee and the Circuit Judge will not be disturbed, unless shown to be contrary to the clear preponderance of the evidence, or controlled or influenced by error of law. *Williams v. Bruton*, 133 S. C. 395, 131 S. E. 18.

In the tenth exception the defendants urge that a majority vote of the membership of the church is necessary before union may be had. There is no rule in the Methodist *Discipline* requiring or contemplating such action. The defendants point to the fact that votes were taken by the membership when the Southern church divided from the Northern branch in 1844. That was done under peculiar circumstances, and at a time when the Annual and General Conferences were composed exclusively of preachers, with no lay representation. Certainly one act standing alone, taking place nearly one hundred years ago, cannot be regarded as having established a custom or precedent, or as having become a part of the unwritten constitution of the church. This is the

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first and only plan of union ever adopted; there was only one separation in the history of the church.

Not being congregational in form of government, it is not required in Methodist churches that the membership act as a whole in determining action to be taken by the church. It is clear, we think, that a vote of the membership is not a step required by the church.

It is contended by the defendants in the fifth exception that the evidence does not show that the Plan of Union was ever voted upon by the Annual Conferences of the Southern Methodist Church, the argument being that it does not appear what plan of union was before the conferences. We approve the concurrent finding of fact of the special referee and the circuit judge that the present Plan of Union was duly voted upon. The "common question" prepared by the College of Bishops, together with a copy of the Plan of Union, was sent to each one of the Annual Conferences. The "common question," with the Plan of Union attached, was voted upon at each conference. No other plan of union was being proposed for adoption. It is reasonable to suppose that the members knew of this Plan of Union, and knew that the General Conference was soon to meet at Birmingham and that union would be acted upon. The plan was definitely identified, in the question, as the one for the union of the three named churches, as proposed by the commissions appointed by the General Conferences.

The practice of submitting long and involved propositions in abbreviated form by categorical questions to be answered by yes or no is very common. *Barkley v. Hayes*, 208 Fed. 319.

We think that the conclusion of the Judicial Council, that the actions of the members of the several Annual Conferences in approving the Plan of Union was valid, necessarily includes a finding that the vote was properly taken on this question in a manner which was in accord with the ecclesiastical law.

In their sixth exception it is urged that the circuit judge should have held that the General Conference of the Southern church failed to proceed according to its own rules of order.

We do not think that this objection can be sustained. The General Conference is the supreme legislative body of the church. It made its own rules of order, and was competent to determine whether or not they had been obeyed. No objection appears to have been made by any one at the time, and we do not think that a civil court should say how such an ecclesiastical body shall conduct its deliberations under its own parliamentary procedure and rules.

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The civil Courts will not inquire whether in doing so it violated any of its own rules. *Morris Street Baptist Church v. Dart*, above.

In the eleventh exception the defendants say that no valid Uniting Conference was held for the reason that the delegates to it were elected "by orders," that is, the election of the clerical delegates by the clerical members, and the election of the lay delegates by the lay members. Elections of delegates "by orders" was the established practice of the church, and specifically so authorized since 1870 by its *Discipline*, for the election of delegates to the General Conferences. The Plan of Union did not forbid elections "by orders." It was merely provided that four hundred delegates be chosen in such manner as the General Conference might determine, with only the limitation that there should be an equal number of ministers and laymen. The General Conference of the Southern church provided that in addition to the twenty members of the commission on union, the remaining three hundred eighty delegates should be elected by the Annual Conference. Here, again, the resolution did not say how they should be elected, and did not prohibit election "by orders." In each Annual Conference the entire body acquiesced in the choosing of all the delegates to the Uniting Conference. No objection was raised in any Annual Conference or in the Uniting Conference to this procedure. We do not think that the objection is sound.

Finally, on this point the defendants contend, in exceptions twelve and thirteen, that no valid sessions of the Annual Conferences were held after the meeting of the Uniting Conference, and that in any event no such Annual Conferences could cure any irregularity in procedure. In the first place, it was not necessary that the Plan of Union be ratified by the Annual Conferences, as it had already been regularly adopted. It is true, however, that it was duly provided that the Annual Conferences should meet, and these meetings were held by each one, including that of the North Mississippi Conference. The North Mississippi Conference, as did the others, adopted resolutions recognizing the fact of union. It appears, then, that at a legally held meeting, the North Mississippi Conference has in fact accepted the Plan of Union.

We, therefore, think that the circuit court correctly found and held that all steps required by the church law have been taken.

No fraud or collusion is even charged. Such a question does not enter into the case, and it is mentioned here only for the purpose of trying to cover all points in logical order.

We turn next to inquire whether or not the decision of the Judicial

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Council has been arbitrary, and the only exceptions of the defendants which so charge are the eighth and ninth. It is there claimed that the decision was arbitrary because the adoption of the Plan of Union would alter the Twenty-third Article of Religion of the Methodist Episcopal Church, South, and would alter the procedure established for amending the first Restrictive Rule of the Church; that to make such a change the approval of each Annual Conference and two-thirds of the succeeding General Conference was required; and that the approval of each Annual Conference was not had, since the North Mississippi Annual Conference at its 1937 meeting did not give its approval.

The Twenty-third Article of Religion has to do with the church's attitude towards civil government and the duties of members to the civil authority. The first Restrictive Rule denies power to the General Conference to alter the Articles of Religion. At the end of the six Restrictive Rules is given the method for amending them.

This entire matter was presented to the Judicial Council, and it held that the plan of union did not alter the Twenty-third Article of Religion or any other article; that the constitution of the church does not require that an amendment to the Articles of Religion, or an amendment to the procedure for altering the articles, receive the joint recommendation of all the Annual Conferences and two thirds of the General Conference succeeding; but that such action may be taken by three fourths of the members of the several Annual Conferences and two thirds of the General Conference; and that even though the North Mississippi Conference did not vote in favor of the plan in 1937, yet more than three fourths of the members of the Annual Conferences did approve it, as well as more than two thirds of the General Conference.

These matters present questions of a purely ecclesiastical nature. They depend upon the constitution and discipline, the faith and doctrine of this great denomination. It may be that in countries which have a state religion such questions could be inquired into by the civil courts, but with us freedom of religion and the separation of church and state are among our most highly cherished principles. The courts of South Carolina will not go behind the decisions of ecclesiastical tribunals on questions of this nature, by making the slightest inquiry into their wisdom. We take such decisions as we find them, after making the preliminary inquiries stated above.

We fully agree with the circuit court that the decision of the Judicial Council on these matters of church law and doctrine was not arbitrary. The Judicial Council had for decision intricate questions of the interpretation of ecclesiastical law extending back for more than a century. It involved the answer to such difficult questions as these: Have the

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Articles of Religion been changed? How may an article of religion be amended since the action of the General Conference in 1832? Does the first Restrictive Rule have to be amended by the process laid down in 1808? Was there a legal method since 1832 for amending the Articles of Religion? Was the action of the General Conference in 1906 in adding to or construing the language of the 1832 provision, legal and constitutional under church law? Was the footnote in the *Discipline* to the Twenty-third Article of Religion relating to foreign residence, constitutionally adopted in 1922?

We are convinced that the court would be altogether unwarranted in saying that a decision on such complicated and abstruse questions is arbitrary. "Arbitrary" means based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules or standard. *6 C. J. S. 145.*

It is also urged that the decision is arbitrary because it is contrary to former decisions of the College of Bishops, some of which consisted of a failure to exercise the veto power. We do not think that it at all follows from this that the decision is arbitrary. This was the supreme judicial council of the church, and as such was not obliged to follow prior decisions of other bodies.

Having made all the inquiries the court may properly make in a case where civil rights depend upon ecclesiastical matters, inquiries as to jurisdiction, procedural steps, and arbitrariness, in accordance with law we accept the ecclesiastical decision that unification has been validly accomplished, and that as a consequence the group represented by the plaintiffs constitutes the true congregation of the Pine Grove Church. Applying to that decision the applicable principles of state law governing the use of realty, we hold that the plaintiffs are entitled to the injunction which they seek with respect to the use and enjoyment of the property.

We come now to the last point in the case, the exceptions of the plaintiffs to the decision of the circuit judge that neither they nor The Methodist Church are entitled to the exclusive use of the name Methodist Episcopal Church, South.

At the Uniting Conference a resolution was adopted by that body, one section of which was as follows:

The Methodist Episcopal Church, The Methodist Episcopal Church, South, and The Methodist Protestant Church, in adopting the name "The Methodist Church" for the United Church, do not and will not surrender

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any right, interest or title in and to these respective names, which, by long and honored use and association, have become dear to the ministry and membership of the three uniting Churches and have become enshrined in their history and records.

The circuit judge and the special referee held that this action was beyond the powers of the Uniting Conference and was void. We agree with that conclusion. The Plan of Union made no reference to the subsequent use of the name Methodist Episcopal Church, South. No conference of the Southern Methodist Church took any action in that regard. The Uniting Conference was not authorized to make any such declaration as was made for the first time at the Kansas City meeting. No grant of power to it even remotely contemplated any such action as this declaration. The Uniting Conference was powerless to take any action concerning names. Its powers were clearly set out and limited in the Plan of Union, which merely stated that the united church should have the name The Methodist Church. In fact, the declaration does not purport to be the act of the Uniting Conference, but is framed in the language of a declaration of each of the three constituent churches.

It is true that a voluntary association, whether it be religious or secular, has the right to protect the use of the name under which it operates, and to seek an injunction against the use by another association of the same name or of one so nearly similar as to be misleading. Ordinarily, however, no organization has a right to enjoin others from using a name which is not that of the association seeking the injunction. *7 C. J. S. 37, 54 C. J. 13.*

The circuit judge and the special referee concur in a finding of fact that the unified church has abandoned the name Methodist Episcopal Church, South. This concurrent finding of fact is soundly based on the evidence.

It is argued by the plaintiffs that the use of the name by other religious societies would lead to confusion. It seems, however, that the unified church has selected a name which cannot readily be confused with other names. The fact that the word "Methodist" appears in both names would not necessarily cause confusion, since the words "Methodist," or "Episcopal," or "Protestant" appear in very many names of religious associations. The evidence shows that there are sixteen or seventeen organizations using the word "Methodist" in their official names.

We do not think that the plaintiffs or the united church have the right to the exclusive use of the name, "Methodist Episcopal Church,

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South," nor that they are entitled to have the defendants enjoined from using the name.

Accordingly, all of the exceptions of both the plaintiffs and the defendants are overruled, and the judgment of the circuit court is affirmed.

XVI

COMPLETE RELIEF OBTAINED IN THE FEDERAL COURT¹

THE PLAN FIRST PURSUED IN THE ATTEMPTED REVOLT AGAINST THE UNITED church was to secure the secession of local churches in which there was a majority opposed to union, and to have the local church property conveyed to new trustees to hold it for the use of the "present and future members" of the local church; to take possession of the church property; and then refuse to accept a preacher sent to the local church, under the claim that the union was invalid. It was the evident purpose of the dissidents when they had thus acquired possession of a sufficient number of local churches, to unite them into a new ecclesiastical organization formed on the model of the Methodist Episcopal Church, South, and under that name, and to claim that such organization was the continuing Methodist Episcopal Church, South, and to set up a claim to the general properties which belonged to the Methodist Episcopal Church, South, at the time of union.² The legal pretense under which this plan proceeded was that the sole beneficiaries of local church property were the members of the local congregation and they had the right by a majority vote of the congregation to control its disposition, and that, under the common law of the church, the members of the local congregations had the right to vote directly on the question of union, and having been deprived of this right, the adoption of union was void. In other words, the theory of the dissidents was that their church had illegally abandoned the members of the local congregations and that, therefore, they had a right to resume sovereign rights which, of course they never had. The same contention was made by certain Cumberland churches in the litigation over the union of the Presbyterian churches, and was overruled by the courts.³

¹ *Purcell, et al. v. Summers, et al.*, 34 Fed. Supp. 421, 126 Fed. (2) 309, 145 (2) 979.

² *Southern Methodist Layman*.

³ *Brown v. Clark*, 102 Texas, 323; 116 S. W. 364; 24 L. R. A. (N.S.) 670.

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When the plan of securing the secession of local churches and the taking possession of local houses of worship was broken up by eight injunctions granted by the state courts of South Carolina in January, 1940, the dissidents held a meeting in Columbia, South Carolina, attended by 400 people, and created the "South Carolina Conference of the Methodist Episcopal Church, South." They adopted a provisional plan of organization for the perpetuation of their church, independent of any other religious society, and appointed certain committees and elected officers, and in furtherance of their plan held a first Annual Conference at Turbeville, South Carolina, June 7-9, 1940. The purpose of this plan was to establish rival churches throughout the South and to invite into it the dissatisfied members of all local congregations of the united church. This was a plan against which the injunctions granted by the state courts of South Carolina could not be effective for the reason that the injunctions in those cases would bind only the members of the local congregations against which the injunctions were issued and, of course, would bind no one outside South Carolina. It was not known whether all of the dissidents in the Pine Grove Church were members of, or affiliated with, the South Carolina Conference of the Methodist Episcopal Church, South, but if they were, the South Carolina Conference included approximately two hundred and fifty dissidents from other churches who would not be bound by the judgment in the Pine Grove case. The defendants in the Pine Grove case were members and officers of a local unit of The Methodist Church, and were members and officers of a local unit claiming the exclusive right to the local property there involved. The suit in the Pine Grove case was brought to cancel a deed as a cloud upon the title, and to enjoin interference with the use of the local house of worship. The general properties of the church were not involved and could not be. The injunctive relief in the Pine Grove case was incidental to the main relief with reference to the local house of worship. No relief could be granted in that case broader than the prayers of the bill or the matters at issue. The Pine Grove case was filed in May, 1939, and the officers and members of the South Carolina Conference of the Methodist Episcopal Church, South—not then created—certainly were not parties defendant, and would not be bound by the judgment in the Pine Grove case.

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In this situation it was determined, after consultation with Bishops Purcell and Watkins, to file a bill for a declaratory judgment and an injunction against the use of the name "Methodist Episcopal Church, South," in the United States District Court of the Eastern District of South Carolina, Columbia Division, in which jurisdiction could be invoked upon the ground of diversity of citizenship by filing the bill in the name of the bishops of the Southeastern Jurisdiction, all of whom resided outside South Carolina. Accordingly, a complaint was prepared and filed in the names of the eight bishops of the Southeastern Jurisdiction, suing officially as bishops and individually as members of The Methodist Church, and as representatives of all the members of The Methodist Church, as a class, and against the officers of the South Carolina Conference of the Methodist Episcopal Church, South, as representatives of the class composed of all the members of said conference.

The complaint alleged that, at the time of union, the value of property owned by the Methodist Episcopal Church, South, and held by trustees, boards, commissions, and other agencies of said church, for its use and benefit, including local churches, parsonages, hospitals, educational institutions, and publishing houses, was approximately four hundred million dollars; that The Methodist Church has property of the net value of \$656,474,867; that the value of the properties in South Carolina, where alienating deeds had been made, exceeded fifty thousand dollars, and that the value of the use of the name Methodist Episcopal Church, South, exceeded the sum of three thousand dollars, and that under the allegations the jurisdictional amount was involved. The complaint alleged the processes by which union was accomplished, the judgment of the Judicial Council, the Declaration of Union respecting the names of the uniting churches. It alleged the validity of union, that an actual controversy existed over the validity of union, and prayed for a judgment and decree affirming its validity. The complaint further alleged the creation of the South Carolina Conference of the Methodist Episcopal Church, South, and its intention to organize, propagate, and extend a church or religious society independent of The Methodist Church under the name "Methodist Episcopal Church, South," under the claim that it was, in fact, a continu-

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ation of that church, and prayed an injunction against the use by the defendants of that name as the name of any church or religious society existing, or which might exist, independent of The Methodist Church.

The defendants filed their answer to the complaint setting up practically the same contentions of the invalidity of union made by the defendants in the Pine Grove case and, in addition, filed a plea to the jurisdiction upon the ground that The Methodist Church was a voluntary, unincorporated society and, as such, was incapable of owning property, and that, therefore, the jurisdictional amount of three thousand dollars was not involved. They maintained that there was no diversity of citizenship and that the bishops constituted a different order and class of membership and were not truly representative of the great mass of the membership, and could not maintain the suit as a class action, and that the state courts in the eight suits pending in them, had first acquired jurisdiction of the subject matter of the litigation, and thus deprived the federal court of jurisdiction.

When the case came on for trial, after the evidence was all in, the court adjourned the hearing to a later date for argument on the question of jurisdiction. At this hearing, after lengthy arguments, the court took the case under advisement, and in a few days filed an elaborate opinion holding that there was a diversity of citizenship, that the bishops were authorized and competent to maintain the action as a class suit, that the necessary jurisdictional amount was involved, that there was an actual justiciable controversy, that the case was an ideal one for a declaratory judgment, but that the court was without jurisdiction on account of the pendency of the eight cases in the state courts. The plaintiffs then carried the case to the Circuit Court of Appeals, on appeal, which reversed the judgment of the district court and remanded the case for further proceedings.

Before the case was reached for final trial in the district court, the Supreme Court of South Carolina had handed down its opinion affirming the report of the referee and the judgment of the Court of Common Pleas in finding that union was valid, and also in finding that the united church had abandoned the name "Methodist Episcopal Church, South," and that The Methodist Church was not entitled to an injunction against the use of that name.

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At the final trial the defendants filed an amendment to their plea, alleging that the federal court was bound by the decision of the Supreme Court of South Carolina under the doctrine of the decision of the Supreme Court of the United States in the case of *Erie Railroad Co., v. Tompkins*. Plaintiffs' counsel contended that the decision in the Erie Railroad case did not control the federal courts in the granting of an injunction which is a remedial process to make effective the judgment declaring the rights of the parties. However, the court overruled the plaintiffs' contention and entered a final decree declaring that the union of the churches was valid and that The Methodist Church was the successor of the Methodist Episcopal Church, South, and was the "legal successor to all property and property rights held by the Methodist Episcopal Church, South, at the time of union, whatever they may have been," but held, as a fact, that the church had abandoned the name "Methodist Episcopal Church, South," and was not entitled to an injunction against its use by the defendants.

Plaintiffs then filed their appeal from so much of the decree as denied an injunction against the use of the name, and again carried the case to the Circuit Court of Appeals. After argument there, that court reversed the judgment of the district court and sent down its mandate ordering the district court to grant the injunction prayed for. According to the mandate, Judge George Bell Timmerman, on March 12, 1945, entered a decree enjoining the defendants, individually and as officers and members of an unincorporated society holding itself out to be the South Carolina Conference of the Methodist Episcopal Church, South, and as representing all other persons similarly situated, and their officers, agents, servants, employees, and attorneys, and those in active concert or participating with them, and each of them, from the use of the name "Methodist Episcopal Church, South," or any name similar to that name, or any synonym thereof, as the name of any church, religious society, or other organization existing, or which may be organized or exist, independent of The Methodist Church.

Thus after nearly six years the litigation came to an end in a complete victory for the united church. In the litigation the opponents of union fought their case not only with pertinacity but with great ability. Not the slightest point, however remotely relevant, was overlooked.

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As this volume includes in full all of the opinions of the federal courts in the case, it is not necessary to summarize the arguments of counsel in the federal case as they are sufficiently reflected in the opinions.

That there was a small minority opposed to union in all of the churches, was shown by the vote upon the approval of union in the Annual Conferences. This is not surprising as perfect unanimity rarely exists in any human institution, and differences of opinion have characterized religious societies in all periods of the history of the church. When it is considered that there were nearly eight million members of the uniting churches, that they lived in all sections of a wide country, that they belonged to different races; that different ideas of social polity and racial relations existed in different parts of the country, the wonder is that there was not greater opposition to union. Besides these social and racial differences, there were shades of differences in religious belief, some sections being considered "fundamentalist" in religious belief and others considered to be characterized by "modernism." Union was accomplished by a commendable spirit of conciliation. If union is to be preserved, this spirit of conciliation must continue. It is inconceivable that the great body of Methodists do not wish to do right, and with patience, charity, and continued conciliation, all such divisive differences as may exist will disappear, and Methodist union will be permanent.

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OPINION AND JUDGMENT OF THE U. S. DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA [COLUMBIA DIVISION] DISMISSING PLAINTIFFS' COMPLAINT FOR LACK OF JURISDICTION¹

This action was begun in this court on the first day of June, 1940.

This suit is brought by eight bishops of the unified "The Methodist Church, an unincorporated Society, on behalf of themselves, and all of the members of said Church, and officially as Bishops of said Church representing themselves and all other members of said Church as a class," all of said bishops being citizens of a state other than the state of South Carolina.

The defendants are all citizens of South Carolina and are made parties defendant "individually and as officers and members of an unincorporated Society, holding itself out to be the 'South Carolina Conference of The Methodist Episcopal Church, South', and as representing all other persons similarly situated, all residing in the state of South Carolina."

The plaintiffs set up three grounds for relief.

First: A declaratory judgment finding that there has been a legal and valid union of the Methodist Episcopal Church (hereafter called the Northern church), the Methodist Episcopal Church, South, (hereinafter called the Southern church), and the Methodist Protestant Church, (hereinafter called Protestant church), into the unified organization known as "The Methodist Church"; and further for a declaratory judgment finding that the unified church (The Methodist Church) has legally succeeded to all the properties and rights of the Southern church, including the exclusive right to use the name Methodist Episcopal Church, South.

Second: It is prayed that a preliminary and permanent injunction do issue, restraining the defendants and all others in like position from using the name "Methodist Episcopal Church, South," or any name similar to that name, or any contraction of that name, or any synonym thereof, as to the name of any church, religious society or other organization existing, or which may be organized or exist independent of "The Methodist Church."

Third: The third paragraph of the prayer is almost identical with the second paragraph of the prayer and asks for the same relief.

The complaint and the answer filed herein are not in keeping with the requirements of the New Federal Rules of Procedure, which require a short and succinct statement of points relied on each pleading. The complaint contains thirty-nine (39) paragraphs and the original answer as filed contains forty (40) paragraphs.

When the matter first came up on motion for preliminary injunction

¹ Purcell, *et al.* v. Summers, *et al.*, 34 Fed. Supp. 421.

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the status of the pleadings was at once discussed but the court was convinced in this particular case and of its importance to Methodists throughout the world that a historical review of plaintiff's claims was almost necessary in the complaint, and equally it was necessary for the defendant to review at length their objections to the claims of the plaintiffs. It has really been of aid to the court instead of a hindrance as is usually to be expected from lengthy pleadings.

This court is not unmindful of the vast importance of the issues raised in this proceeding; the plaintiffs want this court to declare that the unified church (The Methodist Church) has absolutely become the legal successor to all the properties and rights formerly held by the Northern church, the Southern church and the Protestant church.

The plaintiffs allege the net value of the property owned exceeds \$656,000,000.00. That it has permanent funds of over \$14,000,000.00, and annuity funds of over \$7,000,000.00; that its current askings for foreign missions is over \$3,900,000.00 and for home missions over \$2,500,000.00; that in the last twelve months it raised for ministerial support, debt payment, current expenses, etc., exceeding \$80,500,000.00. That there is a membership of approximately 7,800,000 members with 139 educational institutions, 83 hospitals, 40 homes for deaconesses and other properties throughout the world; and this court is asked to declare that these properties are vested in the unified Church (The Methodist Church), or in one of the many corporate entities said to be a part thereof.

This is a burden which has weighed heavily upon the court and constant thought and study has been given the case since the hearing on jurisdictional question was had on July 10 last.

The defendants come into court and deny all of the claims of the plaintiffs and allege that the attempted unification was null, void and of no effect, certainly as to these dissenting defendant members, and also that it was illegal as to the whole Southern church; and further allege in the answer and on motion in open court that the court has no jurisdiction over the subject matter and moved to dismiss the complaint on the following grounds:

(a) That there is no right of property involved and the only issue is one of an ecclesiastical nature and unless property rights are combined therewith this court should not decide a strictly ecclesiastical question, and therefore the necessary jurisdictional amount of three thousand dollars, is not present in the controversy.

(b) That there is no diversity of citizenship and a class suit cannot be maintained by the plaintiffs as bishops as they are not truly representative of the great mass of the membership.

(c) That there are pending in the state courts of South Carolina eight (8) or more class suits brought by members of the unified church (The Methodist Church) against persons who have refused to turn over properties, such as churches and ministers' residences, to the new ministers, appointed by the bishops of the unified church (The Methodist Church),

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and where deeds have actually been made as set forth in the complaint and answer herein from certain trustees claiming to act for the local churches in South Carolina to a new group of trustees for the benefit of the present and future members of such local Methodist Episcopal Church, South, and that because of such pending suits the property in question in the State of South Carolina has been taken possession of by the state courts, is under its jurisdiction, subject to its process, and that the United States District Court cannot now in the present proceeding take possession of the same property and attempt to adjudicate the rights and interests of the parties in this proceeding to the same property involved in the state proceedings.

When it appeared on the first hearing of this matter on June 25 last that a jurisdictional question had been raised, it seemed apparent to the court that, for the benefit of all concerned, this question should be disposed of at the earliest possible date. Accordingly the court set July 10 for the beginning of this hearing and for the parties to make such amendments to the pleadings as they might see fit to propose.

If the court has no jurisdiction, parties to this litigation should not be required to go through a very lengthy trial on the merits, and so it was deemed most important to first determine whether this court had jurisdiction.

From lengthy oral arguments presented and the very full and complete written briefs submitted by counsel in the case, I have concluded that this court is without jurisdiction to hear and determine this matter.

The court, as more fully hereinafter stated, bases its conclusion entirely on the fact that the state courts of South Carolina in eight (8) separate proceedings, all class actions, have taken possession of the *res*, which is in part the subject matter of the present suit, and it would be most improper, and in violations of principles of law established over one hundred years in this country, for two courts of equal jurisdiction to attempt to take charge of and adjudicate rights in property at the same time over the same thing. This is not a matter of comity entirely, but is based on well settled principles of law which should be and must be sustained, for indeed it would be a sad and unhappy event for the state court to make an adjudication with reference to property and hand its mandate to the sheriff of the county, and for the federal court to take an opposite view and hand its mandate to the marshal of the court, and let these two officers of different courts meet upon the property to carry out if necessary their judgments by force. Such a condition should never be permitted to arise in this country, and such has been the opinion of the state and federal courts since their origin.

Amount in Controversy. The defendants claim that this court is asked to pass upon a pure question of ecclesiastical law and that no property rights are involved. And, unless property rights are involved, civil courts have no jurisdiction to pass upon the purely ecclesiastical issues. I think the counsel is eminently correct in taking this position, for as far back as the case of *Watson v. Jones*, 13 How. 666, it was held that the civil courts

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could not look behind a decision of the Judicial Council of the Southern church, but would have to accept the decision of that council on the meaning of the governmental (as distinguished from doctrinal) rules and regulations of the church. But the issues arising in that decision of long ago are found here. The question is, what is the value of the rights which the plaintiffs seek to protect? Does this involve the right in property of a value over three thousand dollars? It seems to the court that without doubt the value of the several rights involved here involve literally millions of dollars in property, in monthly collections, and disbursements, in the operation of a great organization in almost every country throughout the civilized and uncivilized world, and to deny that the jurisdictional amount in controversy is present would be to overlook the allegations of the verified complaint and the many affidavits submitted showing the value of all the church property throughout the world exceeds \$650,000,000.00.

Even if this issue were limited only to a valuation of the properties located in South Carolina, it is shown by the verified amended complaint filed herein that the actions now pending in the state courts in class suits heretofore filed involve the property of eight (8) different churches located at Florence, Clinton, Springfield, Turbeville, Timmons ville, Leo, Ridgefield, and Fork, South Carolina, at a total value exceeding fifty thousand dollars. The properties involved in these suits have been deeded away, so it is alleged, to trustees other than those recognized by the unified church (The Methodist Church), and consequently this suit seeks to re-vest and to quiet the title in the trustees of the unified church (The Methodist Church).

In injunction proceedings and in proceedings of a mixed nature similar to this proceeding, it becomes necessary to determine whether the required jurisdictional amount in controversy is present. But certain well-established principles have now become embedded in our law which must be followed in seeking the answer to that question.

These established principles are two in number:

First: The right which plaintiff seems to protect is the matter in controversy; Second, the right which it is sought to protect must be a right of property, and it must be such that it has a value which can be proved and calculated in the ordinary mode of a business transaction.

The courts have reached that determination only through laborious process, and in effect they have had to overrule certain earlier cases, and particularly what is frequently spoken of as the leading case of *Mississippi F. M. R. Co., v. Ward*, 2 Black 485, 17 L. Ed 311. In that case a bill was filed praying for abatement of a bridge across the Mississippi River, averring it to be a public nuisance, specially injurious to the plaintiff as an owner and navigator of steamboats. The court, through Mr. Justice Catron, gave expression to the following frequently quoted sentence with which it disposed of the question of jurisdiction:

But the want of a sufficient amount of damage having been sustained to give the federal courts jurisdiction, will not defeat the remedy, as the removal of

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the obstruction is the matter of controversy, and the value of the object must govern.

Thus the court did not give effect to what Judge Dobie in his very excellent book on Federal procedure terms "the plaintiff-viewpoint rule" (*Federal Procedure*, p. 133 *et seq.*). From the plaintiff's viewpoint the right which he was seeking to establish was his right to navigate the river unencumbered by the obstruction, and that was the right in controversy.

It is believed that subsequent and more recent decisions have, however, established the principle that the matter in dispute is the right the plaintiff seeks to protect.

In *Hunt v. New York Cotton Exchange*, 205 U. S. 322, 51 L. Ed. 821, 27 Sup. Ct. 529, the cotton exchange filed a suit to enjoin Hunt from receiving, using, or selling the quotations of the exchange without its consent or approval. Hunt contended that the amount in controversy was the cost to him of obtaining the quotations, but the court said that the object of the suit was to protect the property right of the exchange in its quotations, and

the right, therefore, is the matter in dispute, and its value to the Exchange determines the jurisdiction, not the rate paid by appellant to the telegraph company.

In *Bitterman v. L. & N. R. Co.*, 207 U. S. 205, 52 L. Ed. 171, 28 Sup. Ct. 91, 12 Ann. Cas., 693, the railroad company sought to enjoin ticket brokers from dealing in nontransferable round-trip tickets issued at reduced rates. The court, speaking through Mr. Justice White, said that jurisdiction was to be tested

not by the mere pecuniary damage resulting from the acts complained of, but by the value of the business to be protected, and the rights of property which the complainant sought to have recognized and enforced.

In *Glenwood Light & Water Co., v. Mutual etc. Co.*, 239 U. S. 121, 60 L. Ed. 174, 36 Sup. Ct. 30, the plaintiff sought to restrain the defendant from erecting poles and wires in such manner as injured the plaintiff's poles, wires, and business. The district court held that the jurisdictional amount was fixed by the cost to the defendant of removing its poles and wires where they interfered with those of the plaintiff and of replacing its poles and wires in such position as would avoid conflict and interference. The Supreme Court held that in this determination the district court had erred, and that the right which the plaintiff sought to protect was to conduct its business free from wrongful interference by the defendant, and the court added:

The relief sought is the protection of that right, now and in the future, and the value of that protection is determinative of the jurisdiction.

The value of the right sought to be protected here is easily to be arrived at. We have quoted the figures above without attempting to go into detail, and

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regardless of the property in South Carolina, when it is recorded under oath in this proceeding that over seven million, eight hundred thousand people as alleged members of the unified church in addition to owning property mentioned have permanent funds of over twenty million dollars and annual collections for expenses of over eighty million, this court must unhesitatingly hold that the amount in controversy is present.

Diversity of Citizenship—Class Suits. Here the defendants deny that the plaintiffs, eight (8) duly appointed and ordained bishops of the unified church (The Methodist Church), have a right to bring this suit. These bishops, as the court understands it, were formerly bishops of the Southern church and after the alleged unification became bishops of the unified church.

Defendants say that the complaint does not present a proper showing for a class suit, that the plaintiffs are not typical of, and do not have rights similar to, the class or classes of persons in whose behalf they purport to file this proceeding. The defendants are not typical of, and do not possess rights similar to, the classes or persons who would be affected and whose rights would be drawn into question should it be otherwise considered proper to enter a decree in accordance with the prayer of the complaint. This position in the opinion of the court is not tenable.

In this hearing a vast amount of testimony has been submitted in the nature of affidavits and in using depositions taken in some of the state court cases. There has been submitted the rules, regulations, and discipline of the Southern church, and of the unified church, but all of this evidence is of very little help in passing upon the questions of diversity of citizenship and of class suits. The defendants say that the plaintiffs as bishops constitute a "separate class peculiar to themselves." That there were classes of members and all are not of the same type or degree. That the rights, privileges and duties, both legal and ecclesiastical, of each class differ from those of the other classes, and that "the plaintiffs . . . constitute within The Methodist Church a group peculiar unto themselves . . . and the other members . . . are possessed of substantial rights, privileges, and duties not possessed by these . . ." bishops who are plaintiff in this case.

Without reviewing in detail all of the reasons which would permit this court to hold that diversity of citizenship is present and that this is a proper class action, it is alleged in paragraph 37 of the complaint that the unifying conference of the three churches above referred to at the time of the alleged unification passed the following resolution:

Resolved, That we authorize the Bishops of a Jurisdictional Conference within which a suit or suits may be brought, if in their judgment it is proper to do so, to employ competent attorneys to defend and protect the interests of The Methodist Church, local and general, in such property and to cause such suit or suits to be brought as may in their judgment be necessary to protect the interest of The Methodist Church.

A class action appropriately brought does not of necessity require the action of some supreme body which apparently is entitled by its resolutions and

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duly adopted motions to guide and carry on the work of a church such as the alleged unified church (The Methodist Church) whose legal status is largely the subject matter of this controversy. But here we have a direct, definite resolution of the supreme body authorizing the bishops of this jurisdiction to bring this action if in their judgment it seemed appropriate and proper, and then in the ensuing paragraph, No. 38 of the complaint, it is alleged that these bishops had a meeting on the tenth of April, 1940, and passed a resolution authorizing this suit to be filed. Where could there be a more representative or class action found to exist? In one of the earliest cases, which is interesting to note grew out of the division of the old Methodist Church in 1844 when the Southern church was formed, the Supreme Court of the United States in *Smith et al v. Swormstedt et al*, 16 How. 302, quoting from Mr. Justice Story, held as follows:

Mr. Justice Story, in his valuable treaty on "Equity Pleadings," after discussing this subject with his usual research and fullness arranges the exceptions to the general rule, as follows: 1. Where the question is one of a common or general interest, and one or more sue or defend for the benefit of the whole. 2. Where the parties form a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to represent the rights and interests of the whole; and 3. Where the parties are very numerous, and though they have or may have separate and distinct interests, yet it is impracticable to bring them all before the court.

In this latter class, though the rights of the several persons may be separate and distinct, yet there must be a common interest or a common right, which the bill seeks to establish or enforce. As an illustration, bills have been permitted to be brought by the lord of a manor against some of the tenants, and *vice versa*, by some of the tenants in behalf of themselves and the other tenants, to establish some right—such as suit to a mill, or right of common, or to cut turf. So by a person of a parish against some of the parishioners to establish a general right to tithes—or conversely, by some of the parishioners in behalf of all to establish a parochial *modus*.

In all cases where exceptions to the general rule are allowed, and a few are permitted to sue and defend on behalf of the many, by representation, care must be taken that persons are brought on the record fairly representing the interest or right involved, so that it may be fully and honestly tried.

Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court.

The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained.

Each of the three elements mentioned above by Mr. Justice Story approved

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by the Supreme Court of the United States are present in this case. The question here is:

(1) One of common or general interest.

(2) Undoubtedly this, The Methodist Church, is a voluntary unincorporated association, and it is not only to be presumed that the plaintiffs represent the rights and interests of the alleged unified conference, but by a definite resolution the bishops here were directed to bring this suit.

(3) The parties are more numerous it would seem to the court than in any other suit ever brought into litigation in this country, for over seven million people, it is alleged in the verified complaint, are members.

The device of the representative suit is recognized as the procedurally correct method of determining and defining the rights of the parties in suits of this character.

There is a series of cases which illustrate to a marked degree the binding effect of decrees in such representative suits. The series of cases that the court refers to have to do with the affairs of the Hartford Life Insurance Company. The leading case is *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662; 59 L. Ed. 1165. It seems that there was a department of the Hartford Life Insurance Company known as the "Safety Fund." It decided to abandon the insurance covered by this safety fund, whereupon thirty-one certificate holders brought a representative suit in the courts of Connecticut in behalf of themselves and all other certificate holders, seeking an injunction against the contemplated acts of the insurance company. The Supreme Court of Connecticut held that the insurance company could not abandon this insurance, but authorized the lower court to enter a decree in accordance with the equitable rights of the parties, whereupon the lower court entered a decree, the effect of which was to increase the assessments of the certificate holders. A man living in Minnesota who held one of these certificates died, but shortly prior to his death he had defaulted in the payment of an assessment authorized by the Connecticut decree. His widow brought suit against the insurance company and contended that neither she nor her husband was bound by the Connecticut decree since neither he nor she had been a party to the suit. This case went to the United States Supreme Court and it was held there that the decree in the representative suit did bind Mrs. Ibs and her husband. There was also a policy holder who lived in Missouri who failed to pay the assessment levied pursuant to the decree, and when the beneficiary of his policy brought suit a similar contention was made, but the Supreme Court of the United States again held that the decree in the Connecticut representative suit was binding upon all of the policyholders.

The court commenting upon the original class suit in Connecticut and its binding effect upon all other policyholders, said:

But it was impossible for the company to bring a suit against 12,000 members living in different parts of the United States. It was equally impossible for the 12,000 members to bring a suit against the company to determine the question involved. Under these circumstances, Dresser and thirty other members holding certificates brought suit in their own behalf and in behalf of all others

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similarly situated. . . . But, when such common interest in fact did exist, it was proper that a class suit should be brought in a court of the state where the company was chartered, and where the mortuary fund was kept. The decree in such a suit, brought by the company against some members, as representatives of all, or brought against the company by thirty certificate holders for "the benefit of themselves and all others similarly situated," would be binding upon all other certificate holders.

The case which came up from Missouri and which involved the same class suit as that which the case just cited was *Hartford Life Ins. Co. v. Barber*, 245 U. S., 146, 62 L. Ed. 208. This suit involved certificates of insurance which the insurance company claimed had lapsed because of the non-payment of assessments levied in accordance with the decree in the Connecticut court in the class suit which is above referred to. At the trial the Connecticut judgment was offered in evidence and excluded, and the jury was instructed that the defendant must prove that the assessment in question was made by the directors of the company. This instruction was in the teeth of the Connecticut adjudication. The plaintiff recovered judgment in the court below and the matter finally found its way to the Supreme Court of the United States. The court called attention to the fact that the transactions involved in this case were of the same kind before the court in the *Ibs* case, *supra*, held that the Connecticut judgment should have been admitted in evidence and should have been followed, and then concluded the opinion by saying, "we are of the opinion that full faith and credit was not given to the Connecticut record and that for that reason the present judgments must be reversed."

Here it will be noted that although the suit was brought in a state court in Connecticut, it was held to be a class suit, was set up as a bar in Minnesota and in Missouri in the *Ibs* and *Barber* cases, *supra*, and the Supreme Court of the United States held that the citizens of Minnesota and of Missouri were bound by the adjudication in the state court of Connecticut.

Here, therefore, it would seem most appropriate to approve this action as a class suit in which the plaintiffs are not only presumed to be but by virtue of the evidence presented they "represented the rights and interests of the whole." To say that the bishops are not still members of their church solely because of their standing and character and ability they had been raised to the exalted office of bishop would deny to them probably the highest and most cherished memory and recollection of their career, the day they first decided to join the church which later through a pledge of life long service to their Maker elected them to the most sacred place in the world-wide effort of Methodism.

From the foregoing the court makes it clear that so far as the amount in controversy and diversity of citizenship are concerned this court has jurisdiction.

Right to a Declaratory Judgment. The fundamental issue in this case is whether the union of the three Methodist bodies was and is legal. If this case were ever tried on its merits and it was determined that the attempted

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union was illegal, then the court by appropriate orders would have to disentangle the millions of dollars of property which has been brought under one government in the unified church (The Methodist Church). The rights, duties and obligations of the parties ultimately will depend upon a decision of the legality of the attempted union. Property rights necessarily depend upon it. The issues are actual, indeed acrimonious. The bill alleges, and the answer admits, that alienation deeds have been executed of various church properties located in South Carolina and within the confines of this federal district. The bill charges, and the answer admits, that those opposed to union organized into a laymen's organization for the alleged purpose of claiming to be the successor of the Methodist Episcopal Church, South, and issued a paper advocating their views.

All of this has led to the organization or creation of the so-called South Carolina Conference of the Methodist Episcopal Church, South, by those objecting to the union. Plaintiffs, as representatives of the united church contend that the union was legally and constitutionally effected. The dissidents deny this and refuse to accept the action of the constituted authorities of the church and the decisions of the highest church judicatories.

Under the decision reached by this court, the merits cannot be passed on but it is only fair to the parties for this court to declare, and it so finds, that but for the pendency of other class suits in the state courts this case would be ideal for invoking the right to a declaratory judgment under the Act of Congress. There could hardly be a more real controversy between vast numbers of citizens of this country than is to be found in this case.

Mr. Chief Justice Hughes, in *Aetna Life Ins. Co., v. Haworth*, 300 U.S. 227, 81 L. Ed. 617, splendidly analyzes the Declaratory Judgment Act of 1934, and holds:

A "controversy" in this sense must be one that is appropriate for judicial determination. *Osborn v. Bank of United States*, 9 Wheat. 738, 819, 6 L. Ed. 204, 223. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. *United States v. Alaska S. S. Co.*, 253 U. S. 113, 116, 64 L. Ed. 808, 809, 40 S. Ct. 448. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *South Spring Hill Gold Min. Co. v. Amador Medean Gold Co.*, 145 U. S. 300, 301, 36 L. Ed. 712, 12 S. Ct. 921; *Fairchild v. Hughes*, 258 U. S. 126, 66 L. Ed. 499, 504, 42 S. Ct. 274; *Massachusetts v. Mellon*, 262 U. S. 447, 487, 488, 67 L. Ed. 1078, 43 S. Ct. 597. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. See *Muskrat v. United States*, 219 U. S. 346, 55 L. Ed. 246, 31 S. Ct. 250, *supra*; *Texas v. Interstate Commerce Commission*, 258 U. S. 158, 162, 66 L. Ed. 531, 537, 42 S. Ct. 261. . . . Where there is such a concrete case admitting of an immediate and definite determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised, although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. *Nashville C. & St. L. R. Co. v. Wallace*,

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supra; *Tutum v. United States*, 270 U. S. 568, 70 L. Ed. 738, 46 S. Ct. 425; *Fidelity Nat. Bank and T. Co. v. Swope*, 274 U. S. 123, 132, 71 L. Ed. 959, 964, 47 S. Ct. 511; *Old Colony Trust Co. v. Commissioner of Internal Revenue*, *supra* (279 U. S. p. 725), 73 L. Ed. 926, 49 S. Ct. 499. And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required. *Nashville C. & St. L. R. Co. v. Wallace*, *supra*, 288 U. S. 264, 77 L. Ed. 736, 53 S. Ct. 345, 87 A. L. R. 1191."

It seems to the court that not only this proceeding but the proceedings referred to in the state courts of South Carolina are real and substantial controversies requiring specific relief "through a decree of a conclusive character."

Because as hereinbelow stated, the matters having been first presented to the state court, this court should not now take jurisdiction, but if it had jurisdiction this is a controversy which should be determined under the Declaratory Judgment Act of Congress.

State Court Has Taken Possession of the Res. This is the ground on which this court must dismiss the complaint for want of jurisdiction. The issues in the instant proceedings have been analyzed above and clearly this is a class or representative action for relief affecting certain properties in South Carolina and to declare the attempted unification void and of no legal effect, and for further relief.

In the pleadings as submitted it is shown that eight (8) suits have been begun concerning properties which have been conveyed to new trustees for the benefit of local churches located at Florence, Clinton, Springfield, Turbeville, Timmons ville, Leo, Ridgefield, and Fork, South Carolina, and it is admitted that suits have been begun in the state court on behalf of the unified church or the membership thereof in class actions seeking to set aside the attempted conveyance of these properties. It is admitted that all of these suits are virtually alike, and the so-called Turbeville case—*Dan E. Turbeville, et al v. M. J. Morris, et al*—Common Pleas Court Clarendon County, South Carolina, is offered to the court as typical of all other complaints brought in the state courts of South Carolina. The caption of the complaint is:

"Dan E. Turbeville and D. L. Green, individually and as Trustees of Pine Grove Methodist Church at Turbeville, South Carolina, E. L. Green, individually and as Trustee and steward of said Methodist Church, E. R. Morris, M. L. Dennis and D. Ed Turbeville, individually and as Stewards of said Methodist Church and John L. Green, as members of said Methodist Church individually, all on behalf of themselves and other members of The Methodist Church, formerly the Methodist Episcopal Church, South; Reverend C. C. Derrick as District Superintendent of Kingstree District of the South Carolina Conference of The Methodist Church, and Reverend L. D. B. Williams, Pastor and/or Preacher in Charge of Pine Grove Methodist Church at Turbeville, South Carolina,

Plaintiffs

v.

M. J. Morris, A. N. Coker, E. N. Green, H. W. Cole, F. B. Thomas and W. L. Coker, individually and as members or former members of Pine Grove

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Methodist Church at Turbeville, South Carolina, in their own right and as representing all other members similarly situated,

Defendants.

The defendants admittedly in these state court cases are the dissidents, or persons who have refused to join in the unified church (The Methodist Church) and who have attempted to take possession of the church properties at the places mentioned above, claiming the same as a matter of legal right for the local churches.

In each of the state cases an order has been obtained from a state court Common Pleas judge by way of temporary injunction and providing that the defendants and

all persons similarly situated, be and they hereby are, pending this action and until final judgment is rendered herein, enjoined and restrained from interfering in any way or manner as alleged in the complaint with the use of the premises described in the complaint by the plaintiffs and those on whose behalf this action is brought.

The allegations of the complaints, while not as full and complete, are almost identical with the complaint presently before the court. The prayer is virtually the same in all complaints, and in the state court the prayer of the complaint reads as follows:

(1). That it be adjudged that The Methodist Church exists in continuity with and as the successor of the Methodist Episcopal Church, South, and as such owns and is entitled to the use and possession of the property described in this complaint;

(2). That the deed referred to in paragraph ten be declared null and void and of no force and effect and that the same be delivered to the clerk of this court and by him canceled of record;

(3). That the defendants be permanently enjoined and restrained from interfering with the use of the property herein described by the plaintiffs and others in like situation;

(4). That it be adjudged that to The Methodist Church now belongs the legal title to the name—the Methodist Episcopal Church, South, and that the defendants and all persons in like situation be enjoined from the use of said name or any other name of like import;

(5). That the plaintiffs have judgment for the cost and disbursements of this action and for such other and further relief as may be just and equitable.

Here it is shown in the amended complaint that there are nine (9) other churches or locations in South Carolina where deeds have been made "attempting to vest title in trustees, to hold said properties for the use of a church styling itself the Methodist Episcopal Church, South, independent of The Methodist Church" and that suits have or will be begun in the state courts to set aside these deeds.

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Under the well-established rule of law obtaining in this country since the creation of our courts, it would, nothing else appearing, be unseemly for this court to attempt to take possession of these properties when the state court has already taken possession of the *res*. Without analyzing the vast number of decisions it is only necessary to refer to *Kline v. Burke Construction Co.*, 260 U. S., beginning at page 229:

It is settled that where a federal court has acquired jurisdiction of the subject matter of a cause, it may enjoin the parties from proceeding in a state court of concurrent jurisdiction where the effect of the action would be to defeat or impair the jurisdiction of the federal court. Where the action is *in rem* the effect is to draw to the federal court the possession or control, actual or potential, of the *res*, and the exercise by the state court of jurisdiction over the same *res* necessarily impairs, and may defeat, the jurisdiction of the federal court already attached. The converse of the rule is equally true, that where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same *res* to defeat or impair the state court's jurisdiction.

This Court in *Covell v. Heyman*, 111 U. S. 176, 182, said:

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process of each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from concord; but between state courts and those of the United States, it is something more. It is a principle of right and of law, and therefore of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent, and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane; and when one takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power of the other, as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void. The regulation of process, and the decision of questions relating to it, are part of the jurisdiction of the court from which it issues."

So this court cannot even exercise a discretion in the matter, for this question involves a principle "of right and of law, and therefore of necessity."

This is not a suit for a personal judgment, nor even does it involve a personal liability. If it were such it would not impair the jurisdiction of the federal court, for the court under such circumstances would be free to proceed in its own way to render judgment, and if perchance the federal court rendered judgment first, such would be set up in a personal liability as *res adjudicata* in the state court, but this action involves a thing, and quoting from the *Kline* case, page 231:

It is settled that, when a state court and a court of the United States may each take jurisdiction of a matter, the tribunal whose jurisdiction first attaches holds

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it, to the exclusion of the other, until its duty is fully performed, and the jurisdiction involved is exhausted. . . . The rule is not limited to cases where property has actually been seized under judicial process before a second suit is instituted in another court, but it applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in all suits of a like nature.

A situation like this must not be allowed to involve the question of judicial supremacy, for it is clear that both courts "cannot possess or control the same thing at the same time."

A decision in the class actions pending in the state courts of South Carolina would bind parties every where. The Supreme Court of this state has so decided in *Faber v. Faber*, 76 S. C. 156, 56 S. E. 677, where *Smith v. Swormstedt*, *supra*, from the Supreme Court of the United States was distinctly adopted and approved. The Supreme Court of the United States has clearly held that the state court decision in Connecticut in the Ibs and Barber cases, *supra*, was binding upon citizens of Minnesota and Missouri. So a final adjudication of all the issues can be definitely and finally determined in the present proceedings in the state courts of South Carolina.

It is, therefore, clear that the state court having obtained jurisdiction of the *res*, having issued its order of injunction, having before it the parties in a clear representative or class action, has a right to render its judgment, and this court has no power or right to take jurisdiction of a similar case.

To all intents and purposes the parties, the properties, the rights, and liabilities involved are the same and in deference to this long established rule of law as well as of comity it is incumbent on this court to dismiss the complaint here.

And it is so ordered.

(Signed) ALVA M. LUMPKIN

United States District Judge, Eastern District of South Carolina

July 25, 1940

JUDGMENT AND OPINION OF THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FOURTH CIRCUIT, REVERSING THE JUDGMENT OF THE U. S. DISTRICT COURT, AND REMANDING CASE FOR FURTHER PROCEEDINGS ²

This is an appeal from an order dismissing a suit on the ground that state courts had first acquired jurisdiction of the *res* thought to be involved. The suit was instituted by certain bishops of The Methodist Church, suing in behalf of themselves and other members of that organization. Its purpose

² *Purcell, et al. v. Summers, et al.*, 126 Fed. (2) 390. This case was argued orally in the U. S. Circuit Court of Appeals, by Judge J. Morgan Stevens and Walter McElreath, for the appellants, and by Collins Denny, Jr., and G. T. Graydon, for the appellees.

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was: (1) to obtain a declaratory judgment to the effect that the union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church into one organization known as The Methodist Church was valid and that The Methodist Church had succeeded thereby to the rights and properties of the merged organizations and particularly those of the Methodist Episcopal Church, South, and (2) to restrain defendants, sued as representatives of former members of the Methodist Episcopal Church, South, who denied the validity of the union and were claiming to constitute the Methodist Episcopal Church, South, and to be entitled to its rights and properties, from using the name of that organization or any name similar thereto. The suits in state courts thought by the judge below to defeat the jurisdiction here were eight suits brought by officers and members of local Methodist churches against dissident members, who denied the right of the united Methodist Church to use and control the respective local church properties and claimed the right, as former members of the Methodist Episcopal Church, South, to use the name and local properties of that organization. The purpose of these suits was primarily to determine the right to control over the local properties involved, although injunction against the use of the name by the dissident members was also asked and the rights arising out of the union of the three churches were necessarily in issue.

Defendants filed a plea to the jurisdiction on three grounds: (1) that no rights of property were involved in the suit but merely ecclesiastical questions, as to which the court was without jurisdiction; (2) that the suit did not involve the jurisdictional amount of exceeding three thousand dollars; and (3) that the jurisdiction of state courts had already attached to the property involved in the controversy. The judge below held with plaintiffs on the first and second grounds but was of opinion that the court was without jurisdiction because of the pendency in state courts of the actions relating to the eight local properties. Defendants rely here upon the points decided against them in the court below as well as upon the point decided in their favor.

We think that the lower court correctly held that the complaint presented a controversy justiciable in the courts and that the amount necessary to federal jurisdiction was involved. The questions involved in the case are not mere points of theology or church organization, but questions upon which property rights of great magnitude are dependent. Each of the Christian bodies which united for the formation of The Methodist Church owned valuable rights in property and had rights of great monetary value in their names and in the organizations which they had built up. The allegation of the bill is that the net value of the property owned by The Methodist Church as a result of the union exceeds \$656,000,000; that it has permanent funds of over \$14,000,000 and annuity funds of over \$7,000,000; that its current askings for foreign missions exceed \$3,900,000 and for home missions \$2,500,000; that during the past twelve months it has raised for ministerial support and other purposes a sum in excess of \$80,000,000; and that it has a membership of approximately 7,800,000, with 139 educational institutions, 83 hospitals and

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many other properties. It is further alleged that the value of the properties owned by the Methodist Episcopal Church, South, prior to the union was \$400,000,000, that the value of local church buildings belonging to that church in the state of South Carolina was in excess of \$7,000,000, that these properties were held by trustees, boards, corporations, commissions and other agencies for the benefit of the church and its members, and that as a result of the union of the churches these properties are held for the benefit of the united church and its members and the religious and charitable undertakings in which they are engaged. The contention of defendants is that the legal ownership of these properties is not in the church or its membership but in various boards, trustees, commissions and corporations, but this does not meet the question involved; for plaintiffs contend that, while legal title to the properties is held by the boards, trustees, commissions and corporations, the right to the beneficial use of the properties is in the church organization for the religious and charitable purposes which it has undertaken, and that the right of control over them depends upon the validity of the union into which the three churches have entered, since the trustees, boards, commissions and directors of corporations are appointed by the church through its proper governing agencies. Even in the case of property held in trust for local congregations, the contention of plaintiffs is that the trustees hold it for that part of the congregation which adheres to the united church. See Zollmann, *American Church Law*, par. 548. There can be no question, therefore, but that in asking an adjudication of the validity of the union and a declaration that the united church has succeeded thereby to the rights and properties of the Methodist Episcopal Church, South, the case presents a justiciable controversy affecting property rights of great value. Cf. *Helm v. Zarecor* 222 U. S. 32; *Smith v. Suormstedt* 16 How. 288.

We agree, too, with the judge below that the case is one in which the granting of a declaratory judgment by the federal courts would be peculiarly appropriate. The federal courts represent the sovereignty to which all of the parties to the controversy owe allegiance, which is not true of any state court that might be selected; and the broad power of the federal courts with respect to declaratory judgments is especially suited to the settlement of a controversy of this character between Christian people, who are seeking, not strife, but a final adjudication of rights by which they may abide. The declaratory judgment will expeditiously determine a fact or status "on which a whole complex of rights may depend." It will remove uncertainty and insecurity from the legal relations involved and thus "clarify, quiet and stabilize them before irretrievable acts have been undertaken." Borchard, *Declaratory Judgments*, 2d ed., pp. 283-84.

And we think it equally clear that the case, from the standpoint of amount involved, is well within the federal jurisdiction. It is alleged that the defendants are representative of an organization which has as its purpose the appropriation of the name of the Methodist Episcopal Church, South, and the use of properties formerly belonging to that church but now, as a result of the union, belonging to The Methodist Church. It is well settled that the measure

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of jurisdiction in a suit for injunction is the value to plaintiff of the right which he seeks to protect. *Gibbs v. Buck* 307 U. S. 66; *Glenwood Light Co. v. Mutual Light Co.* 239 U. S. 121; *Hunt v. N. Y. Cotton Exchange* 205 U. S. 322. And the rights of plaintiffs here in the church properties brought in controversy by the schism which is the basis thereof gives ample support to the jurisdiction. Cf. *Gibbs v. Buck*, *supra*. While the schism here is alleged to extend only to the membership of the church in the state of South Carolina, it may easily spread to other states and affect all the properties which belonged to the Methodist Episcopal Church, South, prior to the union, unless the questions involved are promptly settled; and, as pointed out above, if we look only to the value of the church properties in South Carolina which may be affected by the schism, we find that their value exceeds seven million dollars. And aside from the value of the church properties affected by the schism, the right involved in the use of the name of one of the great religious bodies merged by the union has a value, because of its association and background and the loyalties attaching to it, of many times the jurisdictional amount prescribed by statute; and it is the protection of this name and the prevention of its use by defendants and their associates which is one of the primary objects of the suit. It is alleged that the value of the use of the name is in excess of three thousand dollars, and that the damage which will be caused plaintiffs by the confusion and dissension resulting from the use of the name by the defendants will be in excess of twenty-five thousand dollars. These allegations are not denied in the answer; and we find nothing in the record which would justify their being ignored as a basis of jurisdiction.

We do not think, however, as did the court below, that the federal court is without jurisdiction to grant relief under the complaint filed herein because of the pendency of the eight suits respecting local properties filed in the state courts. The objects of suit are different, the parties are different, and, even though the state courts have exclusive jurisdiction over the specific properties involved in those suits, this does not preclude the granting of the relief asked in this suit, except with respect to those properties. As pointed out above, this is a suit the primary purpose of which is to determine the validity of the union under which the organizations and properties of the three religious organizations were merged and the legal rights arising therefrom with respect to church properties, and to protect the name of one of the uniting bodies from being used by dissident members of that body as the name of an independent and rival organization in a part of the territory in which the united church is operating. The eight state court suits, on the other hand, have been instituted for the protection of local properties and do not involve the general rights or properties of the church. This suit is brought by the general officers of the united church, suing for themselves and other members of that church, and is brought against the duly elected representatives of the rival organization as representative of that organization. The state court suits were brought by members and officers of local units of the church against persons formerly associated with those units who were setting up rival claims to local properties. At the time those suits were instituted there

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had been no state or sectional organization of the persons seeking to appropriate the name of the Methodist Episcopal Church, South, but merely an attempt on the part of some persons in local congregations to withhold the local properties from the control of the united church. Since they were instituted, the dissident members have held a general meeting for the purpose of perpetuating the Methodist Episcopal Church, South, as an organization separate and distinct from the united church, and have formed an organization under the name of the South Carolina Conference of the Methodist Episcopal Church, South. The defendants here are sued as members and representatives of that organization. It is clear that no judgment entered in any of the state suits could settle the broad questions which plaintiffs seek to have settled in this suit in such way as to be binding either upon the united church as a whole or upon the rival organization represented by defendants. Cf. *Watson v. Jones* 13 Wall. 679, 715, 717,

In so far as the state court suits seek to control the administration of trusts relating to the local properties or to control those properties themselves, they are properly treated as suits *in rem*; and, in as much as they were brought by representatives of the united church against persons claiming in behalf of the rival body, we think that a sufficient identity of parties is shown to bring into play the rule that, where the jurisdiction of a state court has first attached to property, a federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's jurisdiction. *Toucey v. New York Life Ins. Co.* . . . U. S. . . , 62 S. Ct. 139; *Princess Lida v. Thompson* 305 U. S. 456; *Kline v. Burke Construction Co.* 260 U. S. 226; *Palmer v. Texas* 212 U. S. 118. This does not mean, however, that the federal court is without power to render a judgment between the same parties with respect to other matters; and it is no objection to such exercise of jurisdiction that it may result in the determination of questions which are involved in the state court litigation.

The present suit, in so far as it seeks a declaratory judgment as to the validity of the union and merger of the churches and the protection of the church name against a rival organization, is in no sense an action *in rem* even though, as in a declaration of legitimacy, rights of property may be dependent thereon; and the pendency of the state court actions, although involving similar or the same questions, could not oust the federal court's jurisdiction. It is well settled in the federal courts that it is no ground for dismissing an action *in personam*, that there is another action pending between the same parties respecting the same subject matter. *Princess Lida v. Thompson*, *supra*; *Kline v. Burke Construction Co.*, *supra*. *A fortiori*, there is no ground for dismissal where the parties are different and the subject matter is different, and only a part of the property which could be affected by the decision in the federal suit is involved in the state actions. And this is true notwithstanding that the state actions are actions *in rem*; for the rule is that pendency of an action *in rem* in one court does not preclude the granting in another court of relief not in conflict with the first court's control of the specific property to which the jurisdiction *in rem* has attached.

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Wanamaker v. Eaves, 4 Cir. 79 F. 2d 553; *Newberry v. Davidson Chemical Co.*, 4 Cir. 65 F. 2d. 724, 728; *Com. v. Bradford* 297 U. S. 613. The course to be followed, in view of the actions *in rem* pending in the state courts, therefore, is that prescribed in *Watson v. Jones, supra*, 13 Wall. 679, 720, i.e., the federal court should proceed to grant any relief appropriate under the pleadings which will not interfere with the specific properties which have been brought within the jurisdiction of the state courts.

Many questions have been raised in the briefs and arguments which it is unnecessary to decide here, since only the question of jurisdiction is involved. To what extent the decision of the court first pronouncing judgment is binding upon other courts in the situation here presented, is not before us, nor is the question as to the effect to be given a decision of the state court, under *Erie R. Co. v. Tompkins*, in a case such as this, where the questions involved are between citizens of many different states and affect organizations transcending state lines. As the judge below did not pass upon the merits of the case but dismissed it for lack of jurisdiction, the jurisdictional question is the only one before us. *Stephenson v. Equitable Assurance Society*, 4 Cir. 92 F. 2d 406, 410.

For the reasons stated, the court below erred in dismissing the suit. The order of dismissal will accordingly be reversed and the cause will be remanded for further proceedings not inconsistent herewith.

Reversed.

JUDGMENT AND OPINION OF THE U. S. DISTRICT COURT AFFIRMING THE VALIDITY OF UNION AND DENYING INJUNCTION AGAINST USE OF NAME "METHODIST EPISCOPAL CHURCH, SOUTH"³

This action was commenced June 1, 1940. Thereafter my predecessor entered an order dismissing the complaint for reasons then appearing to him sufficient. An appeal was taken upon said order to the Circuit Court of Appeals for the Fourth Circuit. On March 9, 1943, the Circuit Court of Appeals handed down an opinion reversing the order of dismissal and remanded the case to this court for further proceedings not inconsistent with the appellate court's opinion. *Purcell, et al v. Summers, et al*, 126 F. (2d) 390.

This cause is now before the Court for decision on what remains of the controversy after certain concessions were made on the part of the defendants following the filing of the opinion of the South Carolina Supreme Court in the cause of *Turbeville, et al v. Morris, et al*, (S. C.), 26 S. C. (2d) 821, wherein questions quite similar to the ones here involved were considered.

The plaintiff prays:

(1) For a declaratory judgment finding that the union of the Methodist Epis-

³ *Purcell, et al. v. Summers, et al.*, 54 Fed. Supp. 279. This case was argued orally in the U. S. Circuit Court of Appeals by Judge J. Morgan Stevens and Walter McElreath for the appellants and by Collins Denny, Jr., for the appellees.

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copal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church was legal and valid, and that The Methodist Church is the legal successor of all the properties and rights formerly held by the Methodist Episcopal Church, South, including the sole and exclusive right to use of the name "Methodist Episcopal Church, South."

(2) That a permanent . . . injunction . . . may be issued restraining and enjoining the defendants, their associates, agents, and all those confederating with them from using the name "Methodist Episcopal Church, South," or any name similar to that name, or any contraction of that name, or any synonym thereof, as the name of any church, religious society, or other organization existing, or which may be organized or exist independent of The Methodist Church.

(3) That a permanent . . . injunction . . . may be issued restraining and enjoining the defendants, their associates and all those joining or confederating with them, from using the name or appellation "Southern Methodist Church" as the name of any church, religious society or organization organized or existing, or which may be organized or exist independently of The Methodist Church.

Following the language quoted there are prayers for costs and for "such other and further relief as in equity may be just."

In recognition of the binding force of the decision in *Turbeville, et al v. Morris, et al, supra*, the defendants, by leave of the court, filed an amended answer in which among other things, it was said, "The Supreme Court of South Carolina having laid down the rules of decision heretofore set forth, it is not denied that the three constituent churches have united into the new Methodist Church and that The Methodist Church has succeeded to the property, if any, of the three constituent churches."

It follows, therefore, that the first prayer of the complaint will be granted to the extent that it will be adjudged "that the union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church," under the new name and style of The Methodist Church, was and is legal and valid, and that said new church is the legal successor to all property and property rights held by the Methodist Episcopal Church, South, at the time of said union, whatever they may have been.

The prime question that remains for settlement is:

Shall the defendants, and all who may be associated with them, be enjoined from using the name "Methodist Episcopal Church, South," or any contraction or synonym of either of said names, as the name of their religious association?

As a prelude to a discussion of the question posed, it may be stated factually that the plaintiffs are bishops of "The Methodist Church," a voluntary Christian association, suing of right on behalf of themselves and other members of their church.

The defendants are officers and/or members of the complained of "South Carolina Conference of the Methodist Episcopal Church, South," also a voluntary Christian association, and they are representative of other members of said association.

That, prior to the creation of The Methodist Church at the meeting of the

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Uniting Conference in the spring of 1939, members of the Methodist Episcopal Church, South, who were opposed to the merger of said three churches, organized a voluntary association known as the "Layman's Association for the Preservation of The Southern Methodist Church," through which they opposed the merger and have since acted to preserve the name of their original church; and, in furtherance of its purposes, said association has published a paper known as *The Southern Methodist Layman*.

That on the call of said association, some of those members of the Methodist Episcopal Church, South, in South Carolina, who had declined to join in the union or to become members of The Methodist Church, met in Columbia, South Carolina, in January, 1940, and organized the "South Carolina Conference of the Methodist Episcopal Church, South," adopted a provisional plan for the preservation unto themselves of the Christian faith of their fathers, and to that end adopted and retained the name to which they had been accustomed and were attached—"Methodist Episcopal Church, South." That conference has met annually since that time, and has attended to the business of their conference, the churches thereof, and the people associated therewith. That in November 1943, there was organized by residents of states other than South Carolina, in Memphis, Tennessee, the Mid-South Conference of the Methodist Episcopal Church, South, which adopted the South Carolina provisional plan.

That the Plan of Union, as submitted to the three constituent churches for adoption, included no provision concerning the future use of the name "Methodist Episcopal Church, South," or the name "Southern Methodist Church"; nor does it appear that the Methodist Episcopal Church, South, before the union, took any action concerning the future use of either of said names.

It having been conceded by the defendants that they have no right and are making no claim to any of the properties held by the Methodist Episcopal Church, South, or by any of its agencies, at the time of the union, or to any of the properties of the united church acquired since the effective date of the union, there is no factual basis for the claim that the use of either of said names by the defendants as a designation of their particular religious faith will constitute a cloud on the title to properties of The Methodist Church, or create confusion thereabout.

Furthermore, there is nothing in the entire record which I have discovered that would warrant the inference that the defendants are using either of the names in question as a means of deception, or that they are by misrepresentations adversely affecting any vested religious or property rights of the plaintiffs, unless it can be said that the plaintiffs are adversely affected by the refusal of the defendants to acknowledge allegiance to plaintiffs' church. Such an adverse effect would flow from the refusal of any other body of Christians to acknowledge a like allegiance.

There is no contention that the defendants are holding themselves out as members or representatives of The Methodist Church; and the mere fact that

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they as professing Christians desire to preserve the name of their original faith—a name that the plaintiffs have abandoned—does not warrant that inference.

Counsel for the plaintiffs pointed out that the Uniting Conference passed a resolution in these words:

The Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church, in adopting the name "The Methodist Church" for the United Church, do not and will not surrender any right, interest or title in and to these respective names which, by long and honored use and association, have become dear to the ministry and membership of the three uniting Churches and have become enshrined in their history and records.

But, as it is said in *Turbeville, et al v. Morris, et al, supra*, this action was beyond the powers of the Uniting Conference and was void . . . The Plan of Union made no reference to the subsequent use of the name Methodist Episcopal Church, South. No conference of the Southern Methodist Church took any action in that regard. The Uniting Conference was not authorized to make any such declaration as was made for the first time at the Kansas City meeting. No grant of power to it ever remotely contemplated any such action as this declaration. The Uniting Conference was powerless to take any action concerning names. Its powers were clearly set out and limited in the Plan of Union, which merely stated that the united church should have the name The Methodist Church. In fact, the declaration does not purport to be the act of the Uniting Conference, but is framed in the language of a declaration of each of the three constituent churches.

Upon the established facts in this case, I am constrained to hold, as a matter of law, that the injunctive relief prayed for should not be granted; and I now state some of the reasons moving me to that conclusion.

I agree with the concurrent findings of the special referee, circuit judge and Supreme Court in the case of *Turbeville, et al v. Morris, et al, supra*, "that the unified church has abandoned the name Methodist Episcopal Church, South." While it is true that an established voluntary association has the right in a proper case to protect its name by seeking injunctive relief against others who would use it to its detriment, but as the record shows in this case the former possession and rightful user of the name, Methodist Episcopal Church, South, formally and solemnly after years of consideration, abandoned that name and selected another by which it is to be ever hereafter known.

The plaintiffs in this case style themselves, individually, "as members of *The Methodist Church*," and, officially, "as bishops of *Said Church* representing themselves and all other members of *Said Church* as a class."⁴

In *Taylor v. Hampton* (S. C.), 4th McCord, 96, it was held that one could abandon a right by securing "to himself some other thing inconsistent with the enjoyment of the former" right.

The unified church exercised its right to select its name. It agreed on "The

⁴ Italics supplied.

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Methodist Church" as its name, and it cannot now disregard the name of its own choice and return to the name Methodist Episcopal Church, South, without going through the same procedures and formalities it went through in the first instance to abandon that name and adopt the name by which it is now known. The decision last mentioned, as respects the matter of abandonment, emphasizes the importance to be attached to the acts and conduct of the party holding to the right claimed to have been abandoned, using these words:

In Domat 218, it is said, "if between two houses, one of which cannot be raised so high as to prejudice the prospect of the other there stands a third house, which not being liable to the same service has been raised and does obstruct the said prospect, the proprietor of the house who owes the service may raise his." The reason is, because the privilege has become useless and cannot be enjoyed. But if the intervening house chance to be removed the service is recovered. But suppose he who claims the service should put up the intervening house himself, will it then be pretended that he can revive the service by pulling it down. I presume not. Because the obstacle raised by himself was of as permanent a nature as the estate to which the service was due. And in that case even the accidental falling of the house, much less the pulling of it down, by the party himself could not restore a right which he had voluntarily relinquished.

Moreover, the plaintiffs have not established an exclusive right to either of the names which they would bar the defendants from using, much less an exclusive right to any contraction or synonym of either said names. As stated by the state Supreme Court in *Turbeville, et al v. Morris, et al, supra*:

"The fact that the word Methodist appears in both names would not necessarily cause confusion, since the word Methodist, or Episcopal, or Protestant appear in very many names of religious associations. The evidence shows that there are sixteen or seventeen organizations using the word Methodist in their official names.

Passing outside of the record, it may be observed that the statement of the Supreme Court is historically correct. The names of the uniting churches are forceful illustrations of the truth of this statement.

Here it is proper to say that, before union, the defendants had as much right, morally and legally, as did the plaintiffs and those for whom they speak to use either of the names in question, or any synonym or contraction of either. By the act of union the majority abandoned the old name and accepted the new. Could the majority, by so doing, preclude the constitutional right of the minority to continue to worship God according to the dictates of the consciences of those constituting the minority, even if the exercise of that constitutional right involved the use of the name to which they and their forefathers had been accustomed? I do not think so. The right of the minority to continue to worship God in manner and form as they had always done is, in my opinion, guaranteed by the First Amendment to the federal Constitution and by Section 4 of Article 1 of the Constitution of the state

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of South Carolina, both of which constitutional provisions use the same phraseology to extend the guaranty of freedom in matters pertaining to the worship of God.

An order for judgment will be signed upon presentation to carry into effect the views hereinabove stated.

Each side should pay its own costs.

JUDGMENT AND OPINION OF CIRCUIT COURT OF APPEALS REVERSING DISTRICT COURT IN DENYING INJUNCTION AGAINST USE OF NAME "METHODIST EPISCOPAL CHURCH, SOUTH" ⁵

This is the second appeal in a suit instituted by certain bishops of The Methodist Church, suing in behalf of themselves and other members of that organization, against certain former members of the Methodist Episcopal Church, South, an organization which had united with the Methodist Episcopal Church and the Methodist Protestant Church to form The Methodist Church. These former members had set up a rival church organization and were claiming the right to the property and to the use of the name of the Methodist Episcopal Church, South. The purpose of the suit at the time of its institution was: (1) to obtain a declaratory judgment to the effect that the union of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church into one organization known as The Methodist Church was valid and that The Methodist Church had succeeded thereby to the rights and properties of the merged organizations and particularly those of the Methodist Episcopal Church, South, and (2) to restrain defendants, sued as representatives of former members of the Methodist Episcopal Church, South, who denied the validity of the union and were claiming to constitute the Methodist Episcopal Church, South, and to be entitled to its rights and properties, from using the name of that organization or any name similar thereto. On the former appeal, we reversed an order of dismissal and sustained the jurisdiction of the court below to entertain the suit, notwithstanding prior institution of local suits in state courts to determine the right to local properties. *Purcell v. Summers* 126 F. 2d 390.

After our decision, one of the local suits was brought on for hearing and carried by appeal to the Supreme Court of South Carolina. Although the suit was brought for the protection of a local property by members and officers of a local unit of the church against dissident members formerly associated with the unit, it involved the question of the validity of the union of the three Methodist Churches and the consequent right of the united church to property of the Methodist Episcopal Church, South,

⁵ *Purcell, et al. v. Summers, et al.*, 145 Fed. (2) 979. This case was argued orally by J. Morgan Stevens and Walter McElreath for the plaintiffs and by Collins Denny, Jr., for the defendants.

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and an injunction against the use of that name by the local dissident members was asked. It was decided in that case that unification of the three churches had been validly accomplished, that the united church had succeeded to the property rights of the Methodist Episcopal Church, South, and that, consequently, the plaintiffs in that case were entitled to the local property there in controversy. The court refused to enjoin defendants there from using the name Methodist Episcopal Church, South, however, upon a finding that the united church had abandoned that name and that no confusion would result from its use. *Turbeville v. Morris* 203 S. C. 287, 26 S. E. 2nd 821.

Following this decision of the Supreme Court of South Carolina the defendants filed an amended answer in this cause, in which they admitted the validity of the union of the churches and the right of the united church to the property of the Methodist Episcopal Church, South, but denied the right of plaintiffs to an injunction restraining defendants from using the name of that church. When the cause came on for final hearing, the court below entered a declaratory judgment setting forth that the union of the three churches "under the new name and style of The Methodist Church was and is legal and valid, and said new church is the legal successor to all property and property rights held by the Methodist Episcopal Church, South, at the time of said union, whatever they may have been;" but the prayer of plaintiffs that defendants be enjoined from using the name of Methodist Episcopal Church, South, was denied on the ground that the united church had abandoned that name and had no exclusive right thereto. Plaintiffs have appealed from the refusals to grant the injunction, and the question as to the correctness of that ruling is the only matter presented by the appeal.

The facts are that the three great branches of the Methodist Church were united at a conference held in Kansas City, Missouri, in May 1939, after a Plan of Union had been agreed upon by conferences of the Methodist Episcopal Church, the Methodist Episcopal Church, South, and the Methodist Protestant Church. The Methodist Episcopal Church, South, which was thus united with the other two churches, was a strong and virile organization with a membership of several million persons and property holdings of a value of more than \$400,000,000. It has had a long and glorious history and was a powerful influence for good through out the country, particularly in the states of the South. The name of this church, like the names of the other uniting churches was of great value, not only because business was carried on and property held in that name, but also because millions of members associated with the name the most sacred of their personal relationships and the holiest of their family traditions. How to preserve the values thus attaching to the names of the uniting bodies, while going forward with a new name under which all three could associate, was a troublesome problem. It was solved by adopting as a name the words of which were common to the names of all three bodies and by

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having the Uniting Conference include the following paragraphs in its Declaration of Union:

IV. The Methodist Episcopal Church, The Methodist Episcopal Church, South, and The Methodist Protestant Church, in adopting the name "The Methodist Church" for the United Church, do not and will not surrender any right, interest or title in and to these respective names, which, by long and honored use and association, have become dear to the ministry and membership of the three uniting Churches and have become enshrined in their history and records.

V. The Methodist Church is the ecclesiastical and lawful successor of the three uniting Churches, and through which the three Churches as one United Church shall continue to live and have their existence, continue their institutions, and hold and enjoy their property, exercise and perform their several trusts under and in accord with the Plan of Union and *Discipline* of the United Church; and such trusts or corporate bodies as exist in the constituent Churches shall be continued as long as legally necessary.

Although thirty-seven of the thirty-eight conferences of the Methodist Episcopal Church, South, had voted in favor of the union and all finally acquiesced therein, and although the total vote of the members of the conferences showed an overwhelming sentiment in favor of union, being 7,650 votes of a total of 8,897, some of those opposed to union continued to oppose it, claiming that the union was invalid and that they constituted the true Methodist Episcopal Church, South, seceded from the old organization and attempted to take the church property and church name with them. Dissident members in South Carolina held meetings at Columbia and Turbeville, South Carolina in the year 1942 and organized a conference, calling themselves a conference of the Methodist Episcopal Church, South, and claiming the right to the property of that organization. They solicited members of the church beyond the boundaries of the state to join in the movement, and a Mid-South Conference was held as a result of which the organization was extended into eight other states. One of the primary purposes of the case before us was to prevent the use of the name of the Methodist Episcopal Church, South, by this rival organization, formed of dissident members who were claiming to be the real continuation of the old church and to be entitled as such to its name and property.

That the use of the name of the Methodist Episcopal Church, South, by the seceding members as the name of the new and rival organization that they are creating will result in injury and damage to the united church in to which the Methodist Church, South, has been merged, is not only established by allegation and proof but it seems so clear to our minds as hardly to admit of argument. A large portion of any community is not well informed about ecclesiastical matters; and for the dissident members to use the name of the old church will enable them to appear in the eyes of the community as the continuation of that church, and to make the united church, which is in reality the continuation of the old church, appear as an intruder. In a conservative community this would

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almost certainly do the united church much harm in that it would enable the seceding members to attach to their rival organization many persons who would otherwise not think of leaving the united church. The united church, furthermore, will be hurt by any reproach that might be brought on the name of one of the merged churches by the faith and practices of those allowed to use that name; and it is not fair to it that such name be used by persons over whose professions of faith and practices it can exercise no control. Much property in which the united church is entitled to the beneficial interest or over which it is authorized to exercise control under the union is held under instruments which name the beneficiary as the Methodist Episcopal Church, South, or which provide that members of governing boards shall be elected by that church; and much confusion and dispute with respect to such property and the government of colleges, orphanages, societies, and foundations will inevitable result from allowing a new organization of seceding members to use the same name. And in addition to all this, the old church, notwithstanding the merger, will still continue to be thought of under the old name in the minds of many of the members who have joined in the union, and gifts intended for it will be made in that name and may be lost or held only through expensive litigation, if the new organization of dissident members is allowed to use the name. Other confusion with resulting damage which cannot now be clearly foreseen must inevitably arise from the use of the old name by the seceding members. The injury reasonably to be apprehended was not overstated, we think, in the allegations of the complaint with regard thereto, which are as follows:

34. Plaintiffs allege that it would be an incalculable and irreparable injury to The Methodist Church by the consequent impairment of its good will, and it would seriously impede its progress, if a rival church existing in the area formerly occupied by the Methodist Church, South, and now occupied by The Methodist Church, and professing to be founded on the same Articles of Religion, should be allowed to appropriate to itself the name "Methodist Episcopal Church, South." The three churches, which united to form The Methodist Church, formed such union to eliminate rivalry among the churches founded on and adhering to the same Articles of Religion, and so as to utilize the combined good will acquired by each of said churches throughout their long existence for the more efficient propagation of the Gospel of Christ according to their Articles of Religion. Said three churches separately grew to their great proportions by the retention of the fidelity of their old members and by the constant accession of new members, and The Methodist Church, in the fulfilment of its Divine mission, cannot exist or grow except by the same means. The use of the name "Methodist Episcopal Church, South," by a rival church operating in the same territory formerly occupied by that church and now occupied by its successor, The Methodist Church, would have the effect of confusing the minds and misleading many members of The Methodist Church, who are necessarily not skilled in ecclesiastical law, into the belief that The Methodist Church is not the true and lawful successor of the Methodist Episcopal Church, South, and entitled to all of its good will, property, rights and privileges; and would promote dissension

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and defections from said church. Further, the use of the name "Methodist Episcopal Church, South," by such rival church would necessarily confuse the minds and mislead those persons wishing to join a church of the Methodist faith and polity as formerly held and practiced by the Methodist Episcopal Church, South, as to which of said churches they should join.

35. Plaintiffs allege that the use of the name "Methodist Episcopal Church, South," by a rival church, existing in the territory formerly occupied by that church and now occupied by The Methodist Church, would result in irreparable pecuniary injury to The Methodist Church, . . . Neither The Methodist Church, nor any other religious society, can live by faith alone but must be supported by contributions from its members and from donations, contributions, and bequests from its members and others interested in its regular support and in the support of its eleemosynary institutions. The existence of a rival church using the name "Methodist Episcopal Church, South" constitutes unfair competition and would tend to mislead and confuse the minds of those members of The Methodist Church, who became such by reason of their membership in the Methodist Episcopal Church, South, as to which of said rival organizations was rightfully entitled to their contributions; and would tend to create doubt and confusion in the minds of those willing to make donations and bequests as to which of said organizations is rightfully entitled to receive and administer such bequests.

Upon these facts, we do not think that there can be any doubt as to the right of plaintiffs to the injunction prayed. The use by one organization of the name of another for the purpose of appropriating the standing and good will which the other has built up is a well recognized form of the wrong known to the law as unfair competition, against which courts of equity have not hesitated, in any jurisdiction, to use the full power of the injunctive process. The general rule with adequate citation of supporting authority was thus stated by the Supreme Court of South Carolina in the comparatively recent case of *Planters Fertilizer & Phosphate Co. v. Planters Fertilizer Co.* 135 S. C. 282, 133 S. E. 706:

A court of equity has jurisdiction to enjoin the use of the same name by another corporation, or the use of a name so nearly similar as to be misleading, thereby injuring its business. *American Order v. Merrill* 151 Mass. 558, 24 N. E. 918, 8 L.R.A. 320; *National Circle v. Nat. Order* (C.C.A.) 270 F. 733; *Peck Bros. & Co. v. Peck Bros. Co.* 113 F. 291, 51 C.C.A. 251, 62 L.R.A. 81; 7 R.C.L. 134; *Higgins Co. v. Higgins Co.* 144 N. Y. 462, 39 N. E. 490, 27 L.R.A. 42, 43 Am. St. Rep. 769; *Trust Co. v. Trust Co.* (C.C.A.) 123 F. 534; *U.S. Light Co. v. U. S. Light Co.* (C.C.) 181 F. 182; *Celluloid Co. v. Cellonite Co.* (C.C.) 32 F. 94.

And it is well settled that to use the name of a corporation, which has transferred its assets and good will to another, in such way as to attempt to appropriate the good will transferred and deprive the transferee of what it has thus acquired, is a wrong which should be enjoined, even though the transferring corporation is defunct at the time and the transferee is not using the name. *Peck Bros. & Co. v. Peck Bros. Co.* 62 L.R.A. 813, 51 C.C.A. 251, 113 F. 291, certiorari denied in 187 U.S. 643, 47 L. ed. 346, 23

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S. Ct. 843; *Herring-Hall-Marvin Safe Co. v. Hall's Safe Co.* 208 U.S. 554, 52 L. ed. 616, 28 S. Ct. 350, modifying 14 L.R.A. (N.S.) 1182, 76 C.C.A. 495, 146 F. 37; *Armstrong v. Atlantic Ice & Coal Corp.* 141 Ga. 464, 81 S. E. 212; *Goddard v. American Peroxide & Chemical Co.* 67 Misc. 279, 122 N. Y. Supp. 360; *Metropolitan Teleph. & Teleg. Co. v. Metropolitan Teleph. & Teleg. Co.* 156 App. Div. 577, 141 N.Y. Supp. 598; and note 27 A.L.R. 1024 et seq. And see A.L.J. Restatement of Torts sec. 752 Comment (b) on kindred question as to the right of one who has discontinued the use of a trademark or trade name to enjoin its deceptive use by others.

The attempt of defendants here to appropriate the name of the old church with which they are no longer connected is governed by identically the same principle as was the case of *Armstrong v. Atlantic Ice & Coal Corp.* *supra*, 141 Ga. 464, 81 S. E. 212, which is very much in point. In that case the Athens Ice & Coal Co. had sold its business and transferred its assets and good will to the Atlantic Ice & Coal Corporation and had gone out of business. Attempt was made by other persons to organize another corporation having the name of the transferor to carry on the same sort of business in the same territory. In holding that the use of the name should be enjoined as an unfair practice, the court said:

Under the evidence in the case the court was authorized to find that this "good will" which had been bought by the Atlantic Company was a thing of value, and that this thing will lose at least a part of its value, if another company is incorporated and permitted to operate under the name of the vendor of the good will sought to be preserved in this action brought for injunctive relief.

We have no doubt that these principles ordinarily applied in the case of business and trading corporations are equally applicable in the case of churches and other religious and charitable organizations; for, while such organizations exist for the worship of Almighty God and for the purpose of benefiting mankind and not for purposes of profit, they are nevertheless dependent upon the contributions of their members for means to carry on their work, and anything which tends to divert membership or gifts of members from them injures them with respect to their financial condition in the same way that a business corporation is injured by diversion of trade or custom. As was well said in the case of *Master et al. v. Machen et al.* 35 D. & C. 657, which involved the use of the name of one of the branches of the Presbyterian Church:

The close similarity raises an inference of resulting confusion. This confusion is bound to react to the disadvantage of the plaintiff. When we say disadvantage, we are not restricting ourselves to the spiritual side alone. We are aware that churches are established for the promulgation of faith under the regulations of definite religious organizations, but we are also aware that such organizations, through some administrative channels, own property, real and personal, and require funds to carry on their purposes. These funds come from contributions, gifts, donations and bequests. No large church organization could live by faith

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alone, and if its income were stopped or substantially reduced, its scope of spreading its religion, as enunciated by its doctrines, would be seriously hampered. Thus any project or movement of another religious organization using a name so similar to an established one as to create confusion and thereby interfering with the spiritual and final progress of that established church and its agencies is inequitable and will be restrained.

The question of protecting by injunction an eleemosynary or charitable organization, as distinguished from a business corporation, from unfair competition in the use of its name, was before us in *Grand Lodge I. B. P. O. Elks* 4 Cir. 50 F. 2d 860, in which we examined the question thoroughly and laid down the rule, with the supporting authorities, as follows:

It is well established that a benevolent, fraternal, or social organization will be protected in the use of its name by injunction restraining another organization from using the same or another name so similar as to be misleading. Nims on *Unfair Competition and Trademarks* 3d ed. sec. 86; Thompson on *Corporations* 3d ed. 77; *Benevolent & Protective Order of Elks v. Improved Benevolent & Protective Order of Elks of the World* 205 N. Y. 459, 98 N. E. 756, Ann. Cas. 1913E 639, L. R. A. 1915B 1074 and note; *Grand Lodge, K. P. v. Grand Lodge, K. P.* 174 Ala. 395, 56 So. 963; *Society of War of 1812 v. Society of War of 1812* 46 App. Div. 568, 62 N. Y. S. 355; *National Circle, Daughters of Isabella v. National Order of Daughters of Isabella* 2 Cir. 270 F. 723; *Daughters of Isabella No. 1. v. National Order, Daughters of Isabella* 83 Conn. 679, 78 A. 333, Ann. Cas. 1912A 822; *International Committee of Young Women's Christian Associations v. Young Women's Christian Association* 194 Ill. 194, 62 N.E. 551, 552, 56 L.R.A. 888; *Benevolent & Protective Order of Elks v. Improved Benevolent & Protective Order of Elks* 122 Tenn. 141, 118 S. W. 389; *Creswell v. Grand Lodge Knights of Pythias* 133 Ga. 837, 67 S. E. 188, 134 Am. St. Rep. 231, 18 Ann. Cas. 453, reversed on other grounds 225 U. S. 246, 32 S. Ct. 822, 56 L. Ed. 1074. The reasons underlying the rule are thus stated in Nims on *Unfair Competition and Trademarks*, 3d ed. sec. 86: "The fact that a corporation is an eleemosynary or charitable one and has no goods to sell, and does not make money, does not take it out of the protection of the law of unfair competition. Distinct identity is just as important to such a company oftentimes, as it is to a commercial company. Its financial credit—its ability to raise funds, its general reputation, the credit of those managing it and supporting it, are all at stake if its name is filched away by some other organization, and the two become confused in the minds of the public."

Directly in point here is one of the cases relied on by us in the Elks case, *supra*, *International Committee of Young Women's Christian Associations v. Young Women's Christian Association of Chicago* 194 Ill. 194, 62 N. E. 515, 552, 56 L.R.A. 188. In that case the appellants had withdrawn from the Young Women's Christian Association because of the failure of the association at one of its conferences to adopt a certain "evangelical test," and, under the name of International Committee of Young Women's Christian Associations, had engaged in the general work in which the original

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association was engaged. In holding that the use of the name should be enjoined, the Supreme Court of Illinois said:

It is apparent the motive for the creation of the International Committee was brought about by the failure of the International Conference to adopt the resolution requiring the "evangelical test." That those persons who favored the adoption of such a resolution had a right to withdraw from the International Conference when convinced that their views were not agreeable to the majority of the conference, and to call a convention of those who were favorable to their views, and to select a committee or board of managers to have general supervision over the work of the associations comprising that convention, is not denied, and must be conceded by all. The question here, however, to be decided is, Had such persons, upon their withdrawal and reorganization, a right to adopt as a name for its managing board "International Committee of the Young Women's Christian Associations"—a name which contains substantially the entire corporate name of appellee, a previously incorporated association, preceded by the words "International Committee of," which clearly indicate to the ordinary mind that appellant is a committee of appellee and the conference with which appellee is affiliated, and with which appellant has no connection, and to use that name in the conduct of its affairs? We think not. The object, work, sources of support, and field of labor of each being substantially the same, and the name of appellee having been adopted and in use by it many years prior to the incorporation of the appellant, the appellant had no right to adopt as its corporate name one so similar to that of appellee, or to incorporate in its name words which would indicate to the public that it was the representative of appellee and the conference with which appellee is affiliated. In addition to the similarity of name, and the representation contained in appellant's name that appellant is the representative of appellee and the conference with which it is affiliated, from an examination of the entire record it clearly appears that such name was adopted by the appellant advisedly and for the purpose of leading the general public and the persons with whom it was likely to be associated, and from whom it hoped and expected to obtain support by way of donations, to believe that it stood as the committee and representative of the associations known as "The Young Women's Christian Association", then organized in the field where it expected to operate. Appellant may have felt justified in so doing by reason of the failure of the International Conference to adopt the "evangelical test"; yet such conduct, in law, amounts to a fraud upon the public and appellee.

And the fact that the name of the old organization is not presently being used makes no more difference in the case of a religious or charitable organization than it does in the case of a business organization. In any case the ground of relief is the element of "passing off" or implied misrepresentation which enables the one using the name to appropriate to itself the standing and good will which rightfully belong to another; and this is just as truly present when seceding members use the name of an organization which has recently merged with another under a new name as when the use of the old name has been continued. The harmful effect of the unfair competition is probably greater in the former case than in the latter; for, where the old organization is operating under a new name, op-

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portunity is presented for doing what the defendants attempted in this case, i.e. for presenting itself to those who are devoted to the old organization as the real survival of that organization. This of course is nothing but a form of that misrepresentation or "passing off" which the courts have not hesitated to enjoin under the rules applicable to unfair competition. In the recent case of *Lone Ranger v. Cox* 4 Cir. 124 F. 2d 650, we pointed out how broadly those rules should be applied to prevent unfair practices of this sort. That case involved the use of the name of a radio broadcast in connection with a theatrical production in such a way as to suggest that there was a connection between the two. In holding that this should be enjoined as unfair conduct by which defendant sought to appropriate to himself what rightfully belonged to another, we said:

While the case presented is not precisely similar to that kind of unfair competition involving the use of a corporate or business name or to the ordinary case involving the unfair use of trademarks and trade names, the principle involved is the same as that recognized in these cases, viz. that a court of equity should enjoin any form of "passing off" which involves fraudulent appropriation, through devices calculated to deceive or mislead the public, of the business or good will which another has built up. In *Grand Lodge I. B. P. O. Elks v. Grand Lodge I. B. P. O. Elks* 4 Cir. 50 F. 2d 860, and *Grand Lodge, etc., v. Eureka Lodge* 4 Cir. 114 F. 2d 46, this court applied the principle to restrain seceding members of a fraternal order from using its name for a new order which they were founding, on the ground that such use would constitute a fraud upon the original order and upon the public. In *General Shoe Corp. v. Rosen* 4 Cir. 111 F. 2d 95, and *Little Tavern Shops v. Davis* 4 Cir. 116 F. 2d 903, we applied the principle to restrain the use of otherwise permissible words to describe merchandise, in one case, and a place of business, in the other, in such way as to enable the defendants therein to appropriate to themselves the benefit of the advertising and good will of the plaintiffs . . . "Obviously, the question of what is unfair competition in business must be determined with particular reference to the character and circumstances of the business." *International News Service v. Associated Press* 248 U. S. 215, 236, 39 S. Ct. 68, 71, 63 L. Ed. 211, 2 A. L. R. 293. In the Elks cases, *supra*, it was the use of the corporate name of the original order. In *General Shoe Co. v. Rosen*, *supra*, it was the use of the word "Friendly" in such a way as to pass off shoes as having been manufactured by plaintiff. In the Little Tavern case, *supra*, it was the use of the words "Little Tavern" in such way as to deceive the public into believing that the tavern was one of a chain operated by plaintiff. Here it is the use of the term "Lone Ranger" and his distinctive call to his horse in such way as to lead to the belief on the part of children interested in the programs of the radio broadcast that the entertainment of defendants is connected in some way with these programs. In all, there is involved the element of fraudulent attempt of some one to "reap where he has not sown" and to appropriate to himself "the harvest of those who have sown." Cf. Chaffee, "Unfair Competition," 53 *Harvard Law Review* 1289, 1311.

The fact that the seceding members had been members of the Methodist Episcopal Church, South, does not justify their use of the name of that organization after they had ceased to be members thereof. The right to use

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the name inheres in the institution, not in its members; and, when they¹ cease to be members of the institution, use by them of the name is misleading and, if injurious to the institution, should be enjoined. No question of religious liberty is involved. Men have the right to worship God according to the dictates of conscience; but they have no right in doing so to make use of a name which will enable them to appropriate the good will which has been built up by an organization with which they are no longer connected. In the second Elks case before this court, *Grand Lodge etc. v. Eureka Lodge* 4 Cir. 114 F. 2d 46, we dealt with the right of seceding members to use a name which would enable them to profit by the good will of the old organization. In holding that such use of the name should be enjoined, we said:

It is argued that in as much as defendants have been members of the order, they have the right, after seceding from it, to use so much of its name as will identify them as having been originally connected with it . . . Where a name, not merely generic or descriptive, is adopted by an order, there is no reason why seceding members should be allowed to use it. Such use by seceding members, over whom the order has no further control, has obviously every element of unfairness that would arise from use by strangers. To say that the defendants are "Elks" and, therefore, have the right to use the word "Elks" in the name of their organization is to beg the question. They cease to be "Elks" when their connection with the organization is severed. When members of the order, they are "Elks", not in any generic or descriptive sense of that word, but in an imaginative sense. They are not elks, but men, and are called "Elks" only because of membership in the order which has adopted that name. Upon separation from the order, their use of the name applicable to members of the order amounts to a fraud upon the order and upon the public and should be enjoined.

It is said that the words "Methodist" and "Episcopal" are generic terms and that defendants have the right to use them for that reason, but defendants are not proposing to use either of these words in a new name so different from the old that no confusion could result. They are using the precise name of the old church; and the question is, not whether they have the right to use "Methodist" or "Episcopal" in a new name so constructed as to avoid confusion, but whether they have the right to use the old name in a way that amounts, as we think it does, to implied misrepresentation to the damage of plaintiffs. The rule applicable is that applied ordinarily in cases of unfair competition and is thus stated in Nims on *Unfair Competition and Trade Marks*, 3d ed. 962:

To establish a cause of action for unfair competition it is not necessary to prove an exclusive right in plaintiff, i.e., that no one else ever has used the mark in the past or that no one else is using it now. The issue is not one of title or exclusive right but of representation, viz., what does the mark as used by plaintiff represent or mean to the public, and what in contrast, does the mark used by the defendant represent.

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And see, also, *Shaver v. Heller & Merz Co.* 8 Cir. 108 F. 821 (opinion by Judge Walter H. Sanford); *Red Polled Cattle Club of America v. Red Polled Cattle Club of America* 108 Iowa 105, 78 N. W. 803; *British-American Tobacco Co. Ltd. v. British-American Tobacco Co.* 2 Cir. 211 F. 933, Ann. Cas. 1915B 363; *Philadelphia Trust S. D. & I. Co. v. Philadelphia Trust Co.* 123 F. 534; *Hendriks v. Montagu*, L.R. 17 Ch. Div. 638; *Lee v. Haley*, L.R. 5 Ch. App. Cas. 154. In the case last cited, Lord Justice Giffard thus stated the rule which we think applicable here:

I quite agree that they have no property in the name, but the principle upon which the case of this subject proceed is, not that there is property in the word, but that it is a fraud on a person who has established a trade, and carries it on under a given name, that some other person shall assume the same name, or the same name with a slight alteration, in such a way as to induce persons to deal with him in the belief that they are dealing with the person who has given a reputation to the name.

It follows from what has been said that plaintiffs are entitled to the injunction prayed unless they are precluded from obtaining it as a result of the decision of the Supreme Court of South Carolina in *Turbeville v. Morris*, *supra*. We do not think that decision stands in the way. In the first place, it must be borne in mind, as defendants properly conceded at the bar of this court, that on account of the difference in parties the judgment in that case does not conclude the question on the principle of *res adjudicata*. *Hansberry v. Lee* 311 U.S. 32. This was pointed out on the first appeal (see 126 F. 2d at 394), where we said:

This suit is brought by the general officers of the united church, suing for themselves and other members of that church, and is brought against the duly elected representatives of the rival organization as representative of that organization. The state court suits were brought by members and officers of local units of the church against persons formerly associated with those units who were setting up rival claims to local properties. At the time those suits were instituted there had been no state or sectional organization of the persons seeking to appropriate the name of the Methodist Episcopal Church, South, but merely an attempt on the part of some persons in local congregations to withhold the local properties from the control of the united church. Since they were instituted, the dissident members have held a general meeting for the purpose of perpetuating the Methodist Episcopal Church, South, as an organization separate and distinct from the united church, and have formed an organization under the name of the South Carolina Conference of the Methodist Episcopal Church, South. The defendants here are sued as members and representatives of that organization. It is clear that no judgment entered in any of the state suits could settle the broad questions which plaintiffs seek to have settled in this suit in such way as to be binding either upon the united church as a whole or upon the rival organization represented by defendants. Cf. *Watson v. Jones* 13 Wall. 679, 715, 717, 20 L. ed. 666.

Defendants contend, however, that although the decision of the state

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court is not binding on the principle of *res adjudicata*, it must be followed by this court as the law of South Carolina, under the decision of *Erie R. Co. v. Tompkins* 304 U.S. 64. Even if we were of opinion that the decision in the state court established a rule of law for South Carolina at variance with the rule of unfair competition stated above, which we think is recognized as the law by practically all courts in this country and England, it would not follow that plaintiffs would not be entitled to an injunction, but merely that the injunction should be so drawn as not to apply to activities of defendants limited to the state of South Carolina. *Adam Hat Stores v. Lefco* 3 Cir. 134 F. 2d 101; *Zephyr American Corp. v. Bates Mfg. Co.* 128 F. 2d 380, 386; *R.C.A. Mfg. Co. v. Whiteman* 2 Cir. 114 F. 2d 86, 89; note 148 A.L.R. 139 et seq.; Chaffee, Unfair Competition 53 *Harvard Law Review* 1289, 1300. It would be intolerable that, in a suit between the representatives of a church, having a membership in many states, and dissident members who have set up a rival organization also extending into many states, the determination of a controversy affecting the church in all of the states where the rival organization is operating should depend upon the rule prevailing in one of the states, simply because a suit with relation thereto happened to be tried there. And this would be particularly unfortunate if the rule prevailing in such state was at variance with the rule prevailing in the others. Unfair competition is a tort governed by the law of the state where it occurs. If it occurs in a number of states it must be dealt with in accordance with their laws; and injunction against conduct constituting unfair competition in a number of states may not be denied merely because under the law of another state it is not recognized as unfair. If he were of opinion, therefore, that the decision of the state court had established for South Carolina a rule as to unfair competition at variance with the rule recognized elsewhere, injunction would not be denied but would be limited so as not to apply to conduct confined to the state of South Carolina. In such case, defendants would be enjoined from using the name Methodist Episcopal Church, South, in connection with any organization operating beyond the limits of South Carolina and from co-operating with others in the use of the name beyond the limits of that state, or, what is the same thing, they would be forbidden to use the name except within the state of South Carolina and in connection with activities confined to that state.

We do not think, however, that the South Carolina court has laid down any rule of law different from the general rule applicable in cases of unfair competition. The general rule against the unfair use of names, as pointed out above, is recognized by the South Carolina decisions (*Planters Fertilizer & Phosphate Co. v. Planters Fertilizer Co.*.... S.C...., 133 S. E. 706); and there is nothing in the decision in the case of *Turbeville v. Morris*, *supra*, which shows any intention to change the rule or to deny its application to religious organizations. On the contrary, it clearly appears that the decision of the state court was based upon its findings of fact as to the abandonment of the name and as to no confusion resulting from the use thereof; and

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there is nothing in *Erie R. Co. v. Tompkins* which requires that we follow state courts in findings of fact.

Where the principle of *res adjudicata* does not apply, we are not bound by the findings of fact made by a state court, even if the evidence is the same. This is so elementary as to require no citation of authority for its support. And we do not think that, upon the record before us, there is any ground for finding that there was any abandonment of the name Methodist Episcopal Church, South. Abandonment involves, not merely nonuser, but intentional relinquishment of rights; and there is no evidence of such intentional relinquishment. The evidence is all to the contrary. The names of the merged churches are carried in the *Discipline* of the united church as identifying the bodies that have been united, and the resolution adopted by the Uniting Conference certainly negatives any intention to abandon the name. The conclusion that the adoption of this resolution was *ultra vires* the power of the conference involves, of course, a conclusion of fact; and our conclusion is that it was well within the implied power of the conference which was charged with the duty of uniting the three organizations and providing a unified operation of the properties controlled by them. If, however, the Uniting Conference had no power to adopt such resolution, it does not follow that there was any intention on the part of the uniting churches or of the unified church to abandon the names under which they had been operating for use by others. They knew perfectly well that any seceding members could make use of the names of the uniting churches to attract to themselves members of the old organizations opposed to change; and it is hardly conceivable that they would have intended to abandon the names for such use to be made of them. Of course, the finding of the South Carolina court that the use of the name of the old organization will not lead to confusion is a pure finding of fact; and for reasons heretofore stated we have no doubt that our conclusion that it will lead to confusion is correct.

It is argued that *Turbeville v. Morris, supra*, should be construed as holding as a matter of law that, upon the merger of corporate bodies under a new name there is such an abandonment of an old name that unfair competition cannot be predicated of its use; but we do not think such construction can properly be placed upon that decision. Such a rule would be so repugnant to reason, so far divergent from the principles underlying the law of unfair competition as declared in prior decisions of the South Carolina court, and so much opposed to the rule prevailing in other jurisdictions, that we ought not impute to the Supreme Court of South Carolina an intention to adopt it unless no other interpretation of the decision of the court is possible. The court certainly did not say in express words that it was adopting any such rule; and when it referred to the concurrent "finding of fact" of the lower court and the referee that the united church had "abandoned" the name, and to their concurrent finding that the attempt of the uniting conference to hold on to the name was beyond its power, the only conclusion is that the court was basing its decision upon these findings of

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fact. And this is certainly true of its finding that the use of the name would not lead to confusion.

It is clear, however, that even if *Turbeville v. Morris*, *supra*, were construed to hold that upon a merger such as occurred here there is abandonment as matter of law of the names of the merged bodies, the position of defendants is not helped; for, as shown above, the right to injunction does not depend upon the right to the use of the name but upon the right to be protected against its unfair use by others. It is true that the state court refused injunction because of such abandonment; but whether injunction will be granted or not is not a matter as to which we look to state law for guidance. We look to state law to determine what the rights of the parties are; but we look to the federal practice to determine the remedies available in the federal courts for their protection in a federal suit in equity. *Russell v. Todd* 309 U. S. 280, 287; *Sprague v. Ticonic Bank* 307 U. S. 161, 164; *Matthews v. Rodgers* 284 U. S. 521, 529; *Henrietta Mills v. Rutherford County* 281 U. S. 121, 128; *Crosley Corp. v. Hazeltine Corp.* 3 Cir. 122 F. 2d 925, 927; *Black & Yates v. Mahogany Ass'n* 3 Cir. 129 F. 2d 227, 223.

The rule is well stated by Judge Biggs in the case cited as follows:

As to substantive rights the cases are clear that the rules of substantive law to be applied in a federal equity court in a diversity case are those which would be applied in a state court sitting in the same state. This is a logical and indeed necessary extension of the principle of *Erie R. Co. v. Tompkins*, *supra*. See *Ruhlin v. New York Life Ins. Co.* 304 U. S. 202, 205, 58 S. Ct. 860, 82 L. Ed. 1290; *New York Life Ins. Co. v. Jackson* 304 U. S. 261, 58 S. Ct. 871, 82 L. Ed. 1329, and *Rosenthal v. New York Life Ins. Co.* 304 U. S. 263, 58 S. Ct. 874, 82 L. Ed. 1330. Nothing contained in *Russell v. Todd* 309 U. S. 280, 60 S. Ct. 527, 84 L. Ed. 754, or in *West v. American T. & T. Co.* 311 U. S. 223, 61 S. Ct. 179, 85 L. Ed. 139, 132 A. L. R. 956, indicates the contrary.

In *Sprague v. Ticonic Bank* 307 U. S. 161, 164, 165, 59 S. Ct. 777, 779, 83 L. ed. 1184, the Supreme Court by Mr. Justice Frankfurter, held, following earlier decisions, including *Payne v. Hook* 7 Wall. 425, 430, 19 L. ed. 260, that "The suits 'in equity' of which these courts [of federal equity jurisdiction] were given 'cognizance' ever since the First Judiciary Act 1 Stat. 73, constituted that body of remedies, procedures and practices which theretofore had been evolved in the English Court of Chancery, subject, of course, to modifications by Congress, e.g., *Michaelson v. United States* 266 U. S. 42, 45 S. Ct. 18, 69 L. ed. 162, 35 A.L.R. 451." We think that this must be deemed to be an indication from the Supreme Court that in so far as equitable remedies are concerned federal courts are to grant them in accordance with their own rules which have been developed out of the English Chancery practice. The words of Mr. Justice Frankfurter in the *Ticonic Bank* case are plain indication that the rule enunciated in *Payne v. Hook*, *supra*, 7 Wall. page 430, 19 L. ed. 260, "The equity jurisdiction conferred on the federal courts is the same that the High Court of Chancery in England possesses; is subject to neither limitation or restraint by state legislation, and is uniform throughout the different states of the Union", is the law so far at least as the granting of equitable remedies is concerned. The rule of *Erie R. Co. v. Tompkins* being determinative of substantive rights, there is still

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preserved to the federal courts a uniform basis for granting equitable remedies in cases in which substantive rights have arisen under state law.

There is no question but that, under the law of South Carolina, the united church upon the merger of the uniting churches became vested with all the rights and property of the Methodist Episcopal Church, South; and there is no question, furthermore, but that a federal court of equity has the power to protect and should protect such rights and property by injunction against those who seek to encroach upon them by unfair practices such as are here involved. To apply the language of Judge Biggs above quoted,

the rule of *Erie R. Co. v. Tompkins* being determinative of substantive rights, there is still preserved to the federal courts a uniform basis for granting equitable remedies in cases in which substantive rights have arisen under state law.

The case comes to this: A great Christian denomination seeking that unity for which all Christians have been striving in recent years, has brought about a union of the three branches into which those who have held its faith have been divided. In achieving this union it has merged the organizations of the three branches under a name composed of elements common to the names of all. Certain members of one of the branches, who are not willing to go into the merger with the organization of which they have been members, are seeking to use its old name for that of a new and rival organization to operate in the same territory. Such use of the name will enable the new organization to strengthen itself at the expense of the old, will inevitably result in much confusion and will cause injury and damage to the old organization. We have no doubt that such a case is one calling for injunctive relief. The dissident members who are unwilling to go along with the merger unquestionably have the right to withdraw from the church and form a new organization, calling it by any name that will not lead to confusion or enable it to appropriate the standing and good will of the organization that has been merged; but they have no right to use the name of the organization from which they have withdrawn and thus hold themselves out to the community of or as connected with the organization.

For the reasons stated, so much of the decree appealed from as refuses an injunction will be reversed and the cause will be remanded with direction to grant the injunction prayed.

Reversed

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FINAL ORDER AND DECREE IN U. S. DISTRICT COURT GRANTING INJUNCTION IN ACCORDANCE WITH MANDATE FROM CIRCUIT COURT OF APPEALS

AND now, towit, this twelfth day of March, 1945, the mandate of the United States Circuit Court of Appeals for the Fourth Circuit, on the appeal of the plaintiffs heretofore taken in the above styled cause having been transmitted to the clerk of this court, and filed therein on the fifteenth day of December 1944, and the same having been brought to the attention of the court in compliance therewith, it is now, on motion of the plaintiffs,

Ordered, adjudged, and decreed by the court as follows:

(1) That portion of the decree of this court entered herein on the twenty-third day of March, 1944, holding and adjudging that The Methodist Church does not possess, as claimed, the sole and exclusive right to the use of the name "Methodist Episcopal Church, South," and holding and adjudging that the prayer of the plaintiffs that defendants and those associated with them be enjoined from using the name "Methodist Episcopal Church, South," or any name similar to that name, or any contraction of that name, or any synonym thereof, as the name of their church, and the prayer that they be enjoined from using the name "Southern Methodist Church," as the name of their church, should be denied, as reflected by the second paragraph of the final judgment of this court on said date, be and the same is hereby vacated and set aside, and the bill of complaint reinstated.

(2) That a perpetual injunction issue out of and under the seal of this court, directed to said defendants, S. J. Summers, C. E. Gamble, Mrs. A. C. Aston, Rev. C. P. Chewning, J. M. Huggins, L. A. Manning, Jr., G. G. Pike, Mrs. S. J. Summers, and Miss Mildred Huggins, individually, and as officers and members of an unincorporated society holding itself out to be the "South Carolina Conference of the Methodist Episcopal Church, South," and as representing all other persons similarly situated, and their officers, agents, servants, employees, and attorneys, and those in active concert or participating with them, and their successors, restraining and enjoining them, and each of them, from the use of the name "Methodist Episcopal Church, South," or any name similar to that name, or any contraction of that name, or any synonym thereof, as the name of any church, religious society, or other organization existing or which may be organized or may exist independent of The Methodist Church.

(3) Let each side pay its own costs, including the costs on appeal.

So ordered, adjudged, and decreed, by the court, on this the twelfth day of March 1945.

(Signed) GEO. BELL TIMMERMAN

United States District Judge.

EXHIBITS

PLAINTIFFS' EXHIBITS

Exhibit No. 1. Typewritten statement by Orville A. Park, plaintiffs' counsel.

Exhibit No. 2. *Journal* of the twenty-third General Conference of the Methodist Episcopal Church, South, Birmingham, Alabama, April 28-May 5, 1938. (Printed copy in evidence and extracts noted.)

Exhibit No. 3. *The Doctrines and Discipline of the Methodist Episcopal Church, South*, 1934. (Printed copy in evidence and extracts noted.)

Exhibit No. 4. Typewritten extracts from *Journals* of Annual Conferences of the Methodist Episcopal Church, South, 1937.

Exhibit No. 5. Photographs of extracts from *Journal* of the Thirty-second General Conference of the Methodist Episcopal Church, Columbus, Ohio, May 1-19, 1936. (Three sheets.)

Exhibit No. 6. Photographs of extracts from *Journal* of General Conference of the Methodist Protestant Church, High Point, North Carolina. (Two sheets.)

Exhibit No. 7. Photographs of extracts from *Discipline of the Methodist Episcopal Church*, 1936. Pages 90-91. (One sheet.)

Exhibit No. 8. Photographs of extracts from *Discipline of the Methodist Protestant Church*, 1936. Pages 30-32. (Two sheets.)

Exhibit No. 9. Photographs of extracts from *Journals* of the Annual Conferences of the Methodist Episcopal Church, South, 1939. (Eighty-four sheets.)

Exhibit No. 10. Copy of letter from C. E. Gamble, M. D., and others, to Bishop Clare Purcell, dated Turbeville, South Carolina, November 8, 1938.

Exhibit No. 11. Copy of letter from E. N. Green and others, to Bishop Clare Purcell and others (undated).

Exhibit No. 12. Copy of letters from L. J. Carter and others, to Bishop Clare Purcell and others (undated).

Exhibit No. 13. Extract from *The Doctrines and Discipline of the Methodist Episcopal Church, South*, 1938. Pages 32-33. (One sheet.)

Exhibit No. 14. Photographs of extracts from *Journal* of the Uniting Conference held in Kansas City, Missouri, April 26-May 10, 1939. (Seventeen sheets.)

Exhibit No. 15. Photograph of official report of the ballots on Methodist unification in the Annual Conferences of the Methodist Episcopal Church, South, 1937. (Forty-three sheets.)

DEFENDANTS' EXHIBITS

Exhibit "A." Sundry photographs of documents, extracts, etc., attached to testimony of Bishop Denny. (126 pages.)

EXHIBITS

Exhibit "B." Photograph of article by Bishop James Cannon, Jr., in Baltimore *Southern Methodist*, March 17, 1938.

Exhibit "C." Reference to sundry publications filed with the record.

Exhibit "D." Typewritten extract from McTyeire's *History of Methodism*. Pages 594-95.

Exhibit "E." Copy of notice and summons and complaint in case of *Clare Purcell et al v. S. J. Summers, et al*, in U. S. District Court for the Eastern District of South Carolina, filed January 1, 1940.

Books and documents filed in record and referred to in testimony and referred to in testimony and in arguments:

A Manual of the Discipline of the Methodist Episcopal Church, South. (19th ed.)

History of the Organization of the Methodist Episcopal Church, South.

The Legal and Historical Aspects of the Plan of Union, by Paul Neff Garber.

"Opinion of the Judicial Council," handed down at Birmingham, Alabama, May 4, 1938.

"Order Dismissing Complaint," in case of *Purcell, et al, v. Summers, et al*, in U. S. District Court for Eastern District of South Carolina, dated July 25, 1940.

Typewritten copies of "Court's Finding and Decree," in cases of Ninth Street Methodist Church, Circuit Court for St. Joseph County, Michigan, and of *Master, et al. v. Machen, et al*. Court of Common Pleas No. 5, for County of Philadelphia, Pennsylvania.

The Legal Intelligence, October 23, 1939, containing decision in case of *Master, et al, v. Machen, et al*.

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[Citations by the Plaintiffs are marked P; those by the Defendants are marked D; and those by both sides are marked PD.]

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Discipline of the Methodist Episcopal Church, South, pars. 111-17, 241, 242, 248
Journal of the General Conference of 1796, pp. 15-16
Manual of the Discipline (19th ed.), pp. 112-13
 Nims, *Law of Unfair Competition and Trade-Marks* (3rd ed.), par. 86
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